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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 15.

CONTINENTAL WALL PAPER COMPANY, PETITIONER,

vs.

THE LEWIS VOIGHT AND SONS COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

PETITION FOR CERTIORARI FILED JANUARY 28, 1907.
CERTIORARI AND RETURN FILED MARCH 6, 1907.

(20,547.)

(20,547.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

No. 212.

CONTINENTAL WALL PAPER COMPANY, PETITIONER,

vs.

THE LEWIS VOIGHT AND SONS COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 5, 1907.

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a

No. 1509.

United States Circuit Court of Appeals, Sixth Circuit.

CONTINENTAL WALL PAPER COMPANY, Plaintiff in Error,
vs.
THE LEWIS VOIGHT AND SONS COMPANY, Defendant in Error.

Error to the Circuit Court of the United States for the Southern District of Ohio.

Record.

Original Transcript Filed October 27, 1905.

Filed Jan. 22, 1906.

FRANK O. LOVELAND, *Clerk.*

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

At a stated term of the Circuit Court of the United States within and for the Sixth Judicial Circuit and Western Division of the Southern District of Ohio, begun and held at the Court Rooms in the City of Cincinnati, Ohio, on the first Tuesday of April being the Fourth day of that month in the year of our Lord One Thousand Nine Hundred and Five, and in the One Hundred and Thirtieth year of the Independence of the United States of America.

Present, the Honorable Albert C. Thompson, District Judge, sitting and holding Circuit Court.

Among the proceedings had were the following, to-wit:

CONTINENTAL WALL PAPER COMPANY, Plaintiff,
vs.
THE LEWIS VOIGHT & SONS COMPANY, Defendant.

Be it remembered that heretofore, to-wit: on the 24th day of February in the year of our Lord One Thousand Nine Hundred, came the plaintiff by its attorneys and filed in the clerk's office of the court aforesaid, its certain petition in this cause against the said Defendant, which said Petition is clothed in the words and figures following, to-wit:

Petition.

United States Circuit Court, Southern District of Ohio, Western Division.

No. ——.

THE CONTINENTAL WALL PAPER CO., Plaintiff,
vs.
THE LEWIS VOIGHT & SONS COMPANY, Defendant.

Petition.

2 Now comes the Continental Wall Paper Company, plaintiff above named, and says that it is and at all times herein set forth has been, a corporation duly created, organized and existing under the laws of the State of Ohio and New York, and a citizen and resident of said State of New York; and that the defendant above named, The Lewis Voight & Sons Company, is a corporation created, organized and existing under the laws of the State of Ohio, and a citizen and resident of the State of Ohio.

The planitiff above named, The Continental Wall Paper Company, says that the above named defendant, The Lewis Voight & Sons Company, is justly indebted to it, the said plaintiff, in the sum of Fifty-Seven Thousand Seven Hundred and Sixty-two and 10-100 Dollars ($57,762.10), with interest thereon from the 29th day of July, A. D. 1899, upon and as the balance of an account, for merchandise sold and delivered, a copy of which is hereunto annexed and made part hereof, marked "Exhibit A," with all credits thereon.

Wherefore said plaintiff demands judgment against said defendant for the sum of fifty-seven thousand seven hundred and sixty-two and 10-100 dollars ($57,762.10) with interest thereon from the 29th day of July, A. D. 1899, and its costs.

KITTREDGE & WILBY,
GUGGENHEIMER, UNTENMEYER & MARSHALL,
Att'ys for Plaintiff.

Counsel for Plaintiff, SAMUEL UNTENMEYER.

STATE OF NEW YORK, *County of New York, ss:*

Robert J. Dyatt, being first duly sworn, says that he is secretary of The Continental Wall Paper Company, the plaintiff above named, and that the statements in the foregoing petition are true, as he verily believes.

ROBERT J. DYATT.

Subscribed in my presence and sworn to before me, this fourteenth day of February, A. D. 1900.

[SEAL.]

P. M. HAMMOND,
Notary Public, 16 N. Y. Co., New York County, New York.

3 EXHIBIT "A."

New York, Nov. 30, 1899.

Lewis Voight & Sons Company,
Cincinnati, Ohio.
In Account with The Continental Wall Paper Co.,
1135 Broadway.

To Acc't Rend.

The Factories:	Mdse.	
St. Louis Jobbing Department,	4.92	
Cincinnati Jobbing Department,	.13	
Fr. Beck & Co.,	3,033.33	
Benton Heath & Co.,	16,896.55	
Wm. Campbell & Co.,	28,366.60	
Connowingo Wall Paper Co.,	6,453.93	
Corey Heller & Co.,	3,602.69	
Cresswell & Washburn,	1,933.23	
Henry Gledhull & Co.,	4,606.12	
Gossler & Wilt Wall Paper Co.,	10,881.71	
Robert Graves Co.,	2,922.32	
George Hulbert,	7,076.77	
Robert S. Hobbs & Co.,	2,546.95	
Hoefens, Meinkens & Baeck,	2,026.30	
Howell & Brothers, Ltd.,	2,415.65	
Janeway & Carpenter,	183.50	
Johnston Wall Paper Company,	10,983.65	
Keystone Wall Paper Company,	10,766.91	
W. H. Mains & Company,	7,346.12	
Middleton Wall Paper Company,	7,774.45	
W. N. Peak,	796.41	
Philadelphia Wall Paper Mills,	6,094.21	
Tarrytown Wall Paper Co.,	12,032.85	
Thomas & Davis Co.,	9,856.30	
Williams Wall Paper Company,	5,088.70	
York Card & Paper Co.,	15,652.64	
York Wall Paper Company,	23,273.30	
		$202,616.24

Credit.

1898.			
Nov. 30.	By Bills Receivable,	$29,867.39	
1899.			
4			
Jan. 31.	By Bills Receivable,	36,000.00	
March 22.	By Cash,	12,931.03	
April 3.	By Cash,	7,731.95	
5.	By Cash,	2,577.32	
8.	By Cash, Interest	37.50	
8.	By Cash,	2,577.32	
8.	By Cash,	7,172.50	
10.	Bills Receivable,	22,500.00	
	Forward,	121,395.01	202,616.24

Recapitulation showing the account according to the different factories that manufactured the merchandise and the balance of the account for the same.

New York, Nov. 30th, 1899.

Lewis Voight & Sons Co., Cincinnati, Ohio.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

To Acc't Rend.

Mdst.

1899.	Forward,	$121,395.01	202,616.24
April 22.	By Cash,	5,119.45	
May 1.	By Cash,	5,102.04	
8.	By Cash,	5,102.04	
12.	By Cash,	8,135.60	144,854.14
	Balance due,		57,762.10

Average due date August 1st, 1899.

Recapitulation.

The details of the account separated according to the different factories which made the merchandise described in the account are on pages 3 to 36 inclusive.

Page 2.

New York, Nov. 30, 1899.

Lewis Voight & Sons Co.,
Cincinnati, Ohio.
In Account with the
Continental Wall Paper Co.,
1135 Broadway.

5 F. Beck & Co.,

To Acc't Rend.

1898.		Mdse.		
Sept.	24.	To Mdse.,	8.00	
	30.	To Mdse.,	28.00	
Oct.	8.	To Mdse.,	26.63	
Nov.	12.	To Mdse.,	196.89	
	22.	To Mdse.,	139.44	
Dec.	8.	To Mdse.,	297.60	
	27.	To Mdse.,	63.88	
	29.	To Mdse.,	376.00	
	31.	To Mdse.,	50.19	
1899.				
Jan.	5.	To Mdse.,	14.44	
	7.	To Mdse.,	311.72	
	25.	To Mdse.,	68.48	
Feb.	2.	To Mdse.,	117.61	
	23.	To Mdse.,	214.54	
	24.	To Mdse.,	348.43	
	25.	To Mdse.,	87.30	
Mch.	3.	To Mdse.,	63.27	
	11.	To Mdse.,	71.21	
	17.	To Mdse.,	154.65	
	29.	To Mdse.,	117.09	
April	7.	To Mdse.,	42.14	
	12.	To Mdse.,	18.90	
	14.	To Mdse.,	52.74	
	20.	To Mdse.,	121.84	
	20.	To Mdse.,	2.20	
	24.	To Mdse.,	23.11	
May	3.	To Mdse.,	18.09	
	12.	To Mdse.,	17.58	3,051.97
1898.		Cr.		
Dec.	31.	By Freight,	.59	
	31.	By Freight,	.54	
1899.				
Apr.	29.	By Freight,	.18	
	29.	By Freight,	.34	

	29.	By Freight,	.10	
	29.	By Freight,	.15	
May	31.	By Cash,	.19	
	31.	By Cash,	.07	
			.07	
		Forward,	2.23	3,051.97

Page 3.

6 New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

F. Beck & Co.,

To Acc't Rend.

Mdse.

		Forward,	2.23	3,051.97
May	31.	By Freight,	.11	
	31.	By Freight,	.28	
	31.	By Freight,	.05	
July	31.	By Mdse.,	15.97	18.64
				3,033.33

Page 4.

New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Benton Heath & Co.,

To Acc't Rend.

1899.		To Mdse.
Oct.	10. To Mdse.,	1,304.65
	20. To Mdse.,	814.30
	21. To Mdse.,	138.00
Nov.	9. To Mdse.,	1,272.76
	12. To Mdse.,	461.74
	16. To Mdse.,	628.74
	18. To Mdse.,	983.33

	25.	To Mdse.,	527.21
	26.	To Mdse.,	299.27
	29.	To Mdse.,	306.12
Dec.	3.	To Mdse.,	2.63
	7.	To Mdse.,	132.28
	9.	To Mdse.,	471.45
	12.	To Mdse.,	.75
	13.	To Mdse.,	368.47
	14.	To Mdse.,	761.84
	19.	To Mdse.,	19.97
7	21.	To Mdse.,	693.72
	28.	To Mdse.,	549.97
	29.	To Mdse.,	129.18
	31.	To Mdse.,	751.42
1899.			
Jan.	3.	To Mdse.,	13.71
	4.	To Mdse.,	296.37
	6.	To Mdse.,	.90
	11.	To Mdse.,	457.44
	18.	To Mdse.,	480.81
	21.	To Mdse.,	469.39
	25.	To Mdse.,	149.34
	31.	To Mdse.,	712.57
Feb.	2.	To Mdse.,	260.89
	4.	To Mdse.,	324.78
	8.	To Mdse.,	156.44
	11.	To Mdse.,	21.88
	16.	To Mdse.,	178.22
	16.	To Mdse.,	337.83
	18.	To Mdse.,	371.17
	20.	To Mdse.,	269.68
	24.	To Mdse.,	127.79
	28.	To Mdse.,	86.98
		Forward,	15,333.99

New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Benton Heath & Co.,

Page 4 1-2.

To Acc't Rend.

		Forward,	15,333.99
Mch.	2.	To Mdse.,	91.44
	4.	To Mdse.,	86.36
	8.	To Mdse.,	317.53
	15.	To Mdse.,	82.28
	18.	To Mdse.,	11.14

	24.	To Mdse.,	133.31	
	28.	To Mdse.,	20.55	
	30.	To Mdse.,	12.24	
April	1.	To Mdse.,	2.65	
	4.	To Mdse.,	66.16	
	10.	To Mdse.,	77.02	
8	24.	To Mdse.,	189.38	
	27.	To Mdse.,	33.25	
	29.	To Mdse.,	164.48	
May	1.	To Mdse.,	17.29	
	4.	To Mdse.,	91.84	
	5.	To Mdse.,	59.79	
	9.	To Mdse.,	36.31	
	16.	To Mdse.,	36.07	
	19.	To Mdse.,	23.44	
	23.	To Mdse.,	26.78	
	29.	To Mdse.,	43.76	
June	9.	To Mdse.,	39.66	
				16,996.72

Cr.

1899.				
Dec.	31.	By Freight,	2.48	
	31.	By Freight,	3.48	
	31.	By Freight,	3.70	
	31.	By Freight,	5.85	
	31.	By Freight,	7.81	
	31.	By Freight,	1.61	
	31.	By Freight,	1.67	
	31.	By Freight,	2.22	
	31.	By Freight,	6.13	
	31.	By Freight,	4.99	
	31.	By Freight,	3.55	
	31.	By Freight,	5.85	
	31.	By Freight,	.81	
		Forward	50.25	16,996.72

Page 5.

		Forward	50.25	16,996.72
Dec.	31.	By Freight,	7.64	
	31.	By Freight,	1.68	
	31.	By Freight,	5.51	
Jan.	31.	By Freight,	1.11	
	31.	By Freight,	.95	
	31.	By Freight,	.42	
	31.	By Freight,	2.13	
	31.	By Freight,	.50	
Feb.	28.	By Freight,	1.18	
Mch.	31.	By Freight,	.47	
	31.	By Freight,	.35	

	31.	By Freight,	3.03	
	31.	By Freight,	1.20	
Aprl	29.	By Freight,	.78	
	29.	By Freight,	.27	
9				
May	31.	By Freight,	.06	
	31.	By Freight,	.03	
	31.	By Freight,	.18	
	31.	By Freight,	.20	
	31.	By Freight,	.04	
	31.	By Freight,	1.10	
	31.	By Freight,	.16	
	31.	By Freight,	.12	
Jun.	30.	By Mdse.	.28	
	30.	By Mdse.	11.69	
Jul.	31.	By Add dis'ct.	.20	
	31.	By Add dis'ct.	.90	
	31.	By Add dis'ct.	7.74	
				100.17
				16,896.55

Page 5 1-2.
New York, Nov. 30, 1899.

In Account With The
Continental Wall Paper Co.,
1135 Broadway.

Wm. Campbell & Co.

To Acc't. Rend.

1898.				
Oct.	14.	To Mdse.	846.30	
	26.	To Mdse.	315.65	
Nov.	1.	To Mdse.	289.55	
	10.	To Mdse.	19.47	
	12.	To Mdse.	1,824.81	
	14.	To Mdse.	312.05	
	17.	To Mdse.	368.69	
	22.	To Mdse.	511.29	
	26.	To Mdse.	641.71	
Dec.	1.	To Mdse.	471.20	
	8.	To Mdse.	1,287.31	
	12.	To Mdse.	884.63	
	12.	To Mdse.	1.56	
	13.	To Mdse.	951.22	

	16.	To Mdse.	656.58	
	17.	To Mdse.	21.03	
	20.	To Mdse.	1,378.90	
	21.	To Mdse.	10.63	
10	24.	To Mdse.	1,754.38	
	30.	To Mdse.	886.90	
1899.				
Jan.	3.	To Mdse.	626.21	
	10.	To Mdse.	1,460.79	
	16.	To Mdse.	465.00	
	18.	To Mdse.	523.92	
	24.	To Mdse.	319.31	
	26.	To Mdse.	681.79	
	30.	To Mdse.	335.26	
Feb.	8.	To Mdse.	1,220.80	
	16.	To Mdse.	376.64	
	17.	To Mdse.	13.50	
	18.	To Mdse.	312.00	
	20.	To Mdse.	700.97	
	27.	To Mdse.	144.96	
Mch.	1.	To Mdse.	489.71	
	4.	To Mdse.	.80	
	6.	To Mdse.	191.08	
	8.	To Mdse.	296.70	
	9.	To Mdse.	83.38	
	10.	To Mdse.	117.60	
Page 6.				
		Forward		21,794.28
Mch.	11.	To Mdse.	412.55	
	15.	To Mdse.	532.51	
	16.	To Mdse.	456.82	
	17.	To Mdse.	146.75	
	21.	To Mdse.	621.94	
	27.	To Mdse.	496.45	
	30.	To Mdse.	119.74	
Aprl	3.	To Mdse.	4.88	
	4.	To Mdse.	195.48	
	10.	To Mdse.	.26	
	10.	To Mdse.	127.98	
	13.	To Mdse.	81.60	
	14.	To Mdse.	443.46	
	17.	To Mdse.	40.80	
	18.	To Mdse.	36.65	
	19.	To Mdse.	1.18	
	20.	To Mdse.	283.09	
	21.	To Mdse.	16.23	
	22.	To Mdse.	1.97	
	24.	To Mdse.	.55	
	26.	To Mdse.	725.07	
	27.	To Mdse.	147 51	

May	1.	To Mdse.	641.70	
11	2.	To Mdse.	566.21	
	3.	To Mdse.	204.00	
	4.	To Mdse.	81.60	
	5.	To Mdse.	370.32	
	10.	To Mdse.	.38	
	17.	To Mdse.	17.22	
	19.	To Mdse.	10.18	
	27.	To Mdse.	.56	
Jun.	10.	To Mdse.	189.68	
				28,769.51

Cr.

1899.		By Mdse.	12.53	
Dec.	31.	By Mdse.	189.66	
	31.	By Freight,	.40	
	31.	By Freight,	6.05	
	31.	By Freight,	1.14	
		Forward	209.78	28,769.51

New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Wm. Campbell & Co.

To Acc't Rend.

Mdse.

1898.		Forward	209.78	28,769.51
Dec.	31.	By Freight,	12.28	
	31.	By Freight,	2.10	
	31.	By Freight,	3 11	
	31.	By Freight,	2.94	
	31.	By Freight,	1.80	
	31.	By Freight,	11.01	
	31.	By Freight,	3.04	
	31.	By Freight,	.80	
	31.	By Freight,	6.85	
1899.				
Jan.	31.	By Freight,	1.55	
	31.	By Freight,	.65	
	31.	By Freight,	1.61	

	31.	By Freight,	.71	
	31.	By Freight,	.94	
12				
Mch.	31.	By Freight,	2.96	
	31.	By Freight,	7.14	
	31.	By Freight,	3.73	
Apr.	29.	By Freight,	1.44	
	29.	By Freight,	2.45	
May	31.	By Freight,	.30	
	31.	By Freight,	1.62	
	31.	By Freight,	.20	
	31.	By Freight,	.53	
	31.	By Freight,	.31	
	31.	By Freight,	.28	
	31.	By Freight,	.92	
	31.	By Freight,	.14	
	31.	By Freight,	.63	
	31.	By Freight,	1.17	
	31.	By Freight,	.17	
	31.	By Freight,	.33	
Jul.	31.	By Mdse.	102.69	
	31.	By Mdse.	16.73	
				402.91
				28,366.60

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New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Connowingo Wall Paper Co.,

To Account Rend.

1898.				
Oct.	1.	To Mdse.	298.68	
	10.	To Mdse.	863.10	
Nov.	22.	To Mdse.	998.84	
Dec.	31.	To Mdse.	1,406.22	
Jan.	6.	To Mdse.	8.40	
Feb.	7.	To Mdse.	1,835.70	
Mch.	6.	To Mdse.	304.70	
	14.	To Mdse.	184.93	
	29.	To Mdse.	227.60	

April 14.	To Mdse.	23.72	
22.	To Mdse.	183.82	
June 10.	To Mdse.	36.98	
May 11.	To Mdse.	3.86	
19.	To Mdse.	90.08	
			6,466.63

13 **Cr.**

1898.			
Dec. 31.	By Freight,	12.00	
1899.			
July 31.	By Addit. disct.	.70	
		12.70	
			6,453.93

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New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Cory-Heller & Co.

To Acc't Rend.

1898.			
Oct. 11.	To Mdse.	1,783.31	
Dec. 9.	To Mdse.	618.50	
15.	To Mdse.	313.59	
24.	To Mdse.	63.70	
1899.			
Jan. 20.	To Mdse.	159.90	
28.	To Mdse.	168.43	
Feb. 18.	To Mdse.	156.98	
Mch. 4.	To Mdse.	73.41	
10.	To Mdse.	30.77	
April 10.	To Mdse.	13.35	
20.	To Mdse.	23.81	
28.	1-24 To Mdse.	108.74	
May 1.	To Mdse.	59.85	
June 8.	To Mdse.	41.56	
			3,615.90

Cr.

1898.			
Dec. 31.	By Freight,	4.70	
Dec. 31.	By Freight,	4.90	
1899.			
Jan. 31.	By Freight,	.45	
Jan. 31.	By Freight,	.45	
14			
Mch. 31.	By Freight,	.89	
Mch. 31.	By Freight,	.24	
April 29.	By Freight,	.53	
May 31.	By Freight,	.04	
May 31.	By Freight,	.07	
May 31.	By Freight,	.25	
Aug. 31.	By Mdse.	.69	
			13.21
			3,602.69

Page 10.

New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Cresswell & Washburn.

To Account Rend.

1898.			
Nov. 4.	To Mdse.	24.53	
Dec. 1.	To Mdse.	170.84	
7.	To Mdse.	107.16	
10.	To Mdse.	203.85	
30.	To Mdse.	395.55	
Feb. 3.	To Mdse.	228.51	
24.	To Mdse.	366.45	
Mch. 9.	To Mdse.	196.92	
28.	To Mdse.	103.59	
April 6.	To Mdse.	100.09	
20.	To Mdse.	18.54	
			19,333.23

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New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Henry Gledhill & Co.

15 To Account Rend.

1898.				
Nov.	2.	To Mdse.	517.71	
	12.	To Mdse.	225.71	
	19.	To Mdse.	180.75	
	21.	To Mdse.	184.92	
	28.	To Mdse.	133.52	
Dec.	3.	To Mdse.	713.61	
	8.	To Mdse.	195.40	
	10.	To Mdse.	132.00	
	14.	To Mdse.	254.57	
	19.	To Mdse.	207.00	
	22.	To Mdse.	269.81	
Jan.	5.	To Mdse.	110.68	
	13.	To Mdse.	120.78	
	23.	To Mdse.	286.70	
Feb.	7.	To Mdse.	298.66	
	21.	To Mdse.	181.89	
Mch.	1.	To Mdse.	138.14	
	6.	To Mdse.	168.75	
	16.	To Mdse.	76.15	
	25.	To Mdse.	5.62	
	30.	To Mdse.	96.63	
	31.	To Mdse.	.68	
April	18.	To Mdse.	52.25	
	25.	To Mdse.	2.83	
	27.	To Mdse.	14.19	
May	2.	To Mdse.	7.24	
	10.	To Mdse.	1.32	
June	8.	To Mdse.	35.21	
	13.	To Mdse.	15.98	
				4,628.70

Cr.

Dec.	31.	By Freight,	2.40	
	31.	By Freight,	1.12	
	31.	By Freight,	1.01	
	31.	By Freight,	.74	
	31.	By Freight,	.96	
	31.	By Freight,	.49	

31. By Freight,		1.17	
31. By Freight,		4.47	
Forward		12.36	4,628.70
		Page 12.	

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In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Henry Gledhill & Co.

To Account Rend.

To Mdse.

1899.				
	Forward	12.36	46.36	4,628.70
Jan. 31.	By Mdse.	.49		
Mch. 31.	By Freight,	.34		
31.	By Freight,	.15		
April 29.	By Freight,	.50		
29.	By Freight,	.03		
May 31.	By Mdse.	8.28		
31.	By Freight,	.22		
31.	By Freight,	.16		
31.	By Freight,	.05		
			22.58	
				4,606.12
		Page 13.		

New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Gossler & Wilt Wall Paper Co.,

To Account Rend.

Mdse.

1898.		
Oct. 5.	To Mdse.	1,282.61
31.	To Mdse.	762.31
Nov. 23.	To Mdse.	477.56
30.	To Mdse.	909.23
Dec. 10.	To Mdse.	341.76

	20.	To Mdse.	2,776.35	
	23.	To Mdse.	15.88	
	29.	To Mdse.	1,634.63	
	31.	To Mdse.	327.90	
1899.				
Jan.	5.	To Mdse.	16.33	
17	11.	To Mdse.	351.67	
	19.	To Mdse.	375.35	
	31.	To Mdse.	162.29	
Feb.	27.	To Mdse.	723.29	
Mch.	13.	To Mdse.	117.33	
	18.	To Mdse.	158.27	
	31.	To Mdse.	25.11	
April	13.	To Mdse.	184.62	
	18.	To Mdse.	265.90	
May	6.	To Mdse.	35.00	
	11.	To Mdse.	2.70	
	16.	To Mdse.	1.35	
	11.	To Mdse.	16.44	
June	15.	To Mdse.	49.23	
	27.	To Mdse.	14.00	
				11,027.11

Cr.

Feb.	28.	By Add. disct.	23.22	
April	29.	By Mdse.	81.90	
Aug.	31.	By Freight,	.90	
	31.	By Mdse.	39.38	
				145.40
				10,881.71

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New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Robert Graves Co.

To Account Rend.

To Mdse.

1898.				
Nov.	28.	To Mdse.	265.44	
Dec.	7.	To Mdse.	148.08	

	8.	To Mdse.	190.50	
	19.	To Mdse.	114.68	
	28.	To Mdse.	289.80	
	31.	To Mdse.	106.62	
1899.				
Jan.	14.	To Mdse.	95.42	
	17.	To Mdse.	79.32	
18	18.	To Mdse.	145.11	
	19.	To Mdse.	58.71	
	23.	To Mdse.	218.84	
Feb.	8.	To Mdse.	103.58	
	20.	To Mdse.	11.80	
	21.	To Mdse.	434.25	
Mch.	2.	To Mdse.	58.37	
	9.	To Mdse.	79.93	
	22.	To Mdse.	54.52	
	30.	To Mdse.	56.00	
	31.	To Mdse.	98.50	
April	3.	To Mdse.	64.25	
	6.	To Mdse.	134.34	
	11.	To Mdse.	6.12	
	12.	To Mdse.	9.12	
	13.	To Mdse.	11.90	
	17.	To Mdse.	64.25	
	17.	To Mdse.	1.12	
	19.	To Mdse.	27.28	
	29.	To Mdse.	3.26	
	29.	To Mdse.	5.95	
				2,937.06

Cr.

1898.				
Dec.	31.	By Freight,	.88	
1899.				
Feb.	28.	By Freight,	.20	
April	29.	By Freight,	.77	
	29.	By Freight,	.18	
	29.	By Freight,	.06	
May	31.	By Freight,	.14	
	31.	By Freight,	.11	
	31.	By Freight,	.08	
			2.42	2,937.06

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New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Robert Graves Co.

19 To Account Rend.

To Mdse.

1899.			
	Forward	2.42	2,937.06
May 31.	By Freight,	.26	
31.	By Freight,	.02	
31.	By Freight,	.02	
31.	By Freight,	.07	
31.	By Freight,	.05	
Jan. 30.	By Freight,	11.90	
			14.74
			2,922.32

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New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

George Halbert.

To Account Rend.

To Mdse.

1898.		
Oct. 11.	To Mdse.	608.70
11.	To Mdse.	108.00
26.	To Mdse.	535.44
Nov. 7.	To Mdse.	314.01
23.	To Mdse.	93.30
29.	To Mdse.	148.51
Dec. 8.	To Mdse.	60.19
15.	To Mdse.	707.04
19.	To Mdse.	265.85
23.	To Mdse.	294.80

1899.				
Jan.	10.	To Mdse.	485.42	
	14.	To Mdse.	202.95	
	18.	To Mdse.	271.28	
	20.	To Mdse.	60.89	
Feb.	4.	To Mdse.	87.88	
	7.	To Mdse.	92.38	
	10.	To Mdse.	508.07	
	20.	To Mdse.	165.21	
	25.	To Mdse.	165.74	
20				
Mch.	3.	To Mdse.	237.61	
	8.	To Mdse.	33.93	
	16.	To Mdse.	77.19	
	21.	To Mdse.	122.50	
	25.	To Mdse.	21.37	
	31.	To Mdse.	149.73	
April	5.	To Mdse.	37.90	
	10.	To Mdse.	120.62	
	18.	To Mdse.	15.30	
	27.	To Mdse.	49.23	
May	3.	To Mdse.	1.47	
	17.	To Mdse.	47.12	
	27.	To Mdse.	160.13	
June	7.	To Mdse.	39.27	
	20.	To Mdse.	863.08	
				7,152.11

Cr.

1898.				
Dec.	31.	By Freight,	8.42	
	31.	By Freight,	2.65	
		Forward	11.07	7,152.11

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New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

George Halbert.

To Account Rend.

Mdse.

1898.				
		Forward	11.07	7,152.11
Dec.	31.	By Freight,	.43	
	31.	By Freight,	2.64	

	31.	By Freight,	.49	
	31.	By Freight,	1.61	
	31.	By Freight,	1.94	
	31.	By Freight,	.77	
1899.				
Jan.	31.	By Freight,	.68	
	31.	By Freight,	.18	
Feb.	28.	By Freight,	1.13	
21				
	28.	By Freight,	.60	
	28.	By Freight,	.62	
	28.	By Freight,	.80	
Mch.	31.	By Freight,	.27	
	31.	By Freight,	.15	
	31.	By Freight,	1.11	
	31.	By Freight,	.40	
	31.	By Freight,	.09	
April	29.	By Mdse.	27.83	
	29.	By Freight,	1.04	
	29.	By Freight,	.49	
May	31.	By Freight,	.34	
	31.	By Freight,	.33	
	31.	By Freight,	.07	
	31.	By Freight,	.04	
June	30.	By Mdse.	20.22	
				75.34
				7,076.77

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New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Company,
1135 Broadway.

R. S. Hobbs & Co.

To Account Rend.

To Mdse.

1898.				
Nov.	2.	To Mdse.	187.90	
	3.	To Mdse.	.28	
	17.	To Mdse.	88.30	
	29.	To Mdse.	278.45	
Dec.	2.	To Mdse.	110.29	

	7.	To Mdse.	96.17	
	10.	To Mdse.	297.59	
	15.	To Mdse.	144.02	
	21.	To Mdse.	216.16	
	29.	To Mdse.	230.50	
1899.				
Jan.	7.	To Mdse.	25.44	
	13.	To Mdse.	62.08	
	18.	To Mdse.	110.95	
22	21.	To Mdse.	62.51	
	30.	To Mdse.	205.86	
Feb.	7.	To Mdse.	44.08	
	10.	To Mdse.	13.20	
Mch.	7.	To Mdse.	50.65	
	10.	To Mdse.	26.91	
	23.	To Mdse.	83.36	
	30.	To Mdse.	61.52	
April	8.	To Mdse.	140.96	
	28.	To Mdse.	9.49	
May	10.	To Mdse.	.14	
June	8.	To Mdse.	6.18	
				252.99

Cr.

1898.				
Dec.	31.	By Freight,	.49	
	31.	By Freight,	.60	
	31.	By Freight,	.78	
	31.	By Freight,	1.04	
	31.	By Freight,	.69	
1899.				
Mch.	31.	By Freight,	.37	
	31.	By Freight,	.11	
April	29.	By Freight,	.20	
May	31.	By Freight,	.25	
	31.	By Freight,	.01	
Aug.	31.	By Mdse.	1.50	
				6.04
				2,546.95

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New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Hoefer, Meinken & Baeck.

To Account Rend.

To Mdse.

1898.				
Nov.	18.	To Mdse.	177.40	
	30.	To Mdse.	210.02	
23				
Dec.	7.	To Mdse.	171.14	
	28.	To Mdse.	472.55	
	29.	To Mdse.	58.46	
1899.				
Jan.	4.	To Mdse.	372.40	
	12.	To Mdse.	155.28	
	21.	To Mdse.	240.49	
	26.	To Mdse.	33.15	
Feb.	10.	To Mdse.	4.20	
	21.	To Mdse.	88.16	
Mch.	3.	To Mdse.	2.90	
	18.	To Mdse.	54.55	
April	14.	To Mdse.	7.98	
				2,048.68

Cr.

1898.				
Dec.	31.	By Freight,	.59	
	31.	By Freight,	2.49	
	31.	By Freight,	1.39	
	31.	By Freight,	.19	
	31.	By Freight,	1.70	
	31.	By Freight,	4.36	
1899.				
Jan.	31.	By Freight,	.44	
	31.	By Freight,	.72	
	31.	By Freight,	.08	
Feb.	28.	By Freight,	1.05	
Mch.	31.	By Freight,	3.32	
April	29.	By Freight,	.11	
May	31.	By Mdse.	.72	
	31.	By Freight,	.12	
	31.	By Freight,	.02	

	31. By Freight,	1.12	
July	31. By Add. Disct.	3.96	
			22.38
			2,026.30

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New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

24 Howell & Brothers, Ltd.

To Acc't Rend.

1898.		Mdse.		
Nov.	4.	To Mdse.	247.76	
	10.	To Mdse.	22.50	
	30.	To Mdse.	289.53	
Dec.	8.	To Mdse.	73.86	
	15.	To Mdse.	447.18	
	30.	To Mdse.	33.36	
1899.				
Jan.	10.	To Mdse.	27.00	
	23.	To Mdse.	27.00	
Feb.	3.	To Mdse.	83.96	
April	29.	To Mdse.	1,163.50	
				2,415.65

New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Janeway & Carpenter.

To Acc't Rend.

1899.		" Mdse.		
Jan.	24.	To Mdse.	121.30	
Mch.	4.	To Mdse.	55.20	
April	1.	To Mdse.	7.00	
				183.50

New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Johnston Wall Paper Co.,

To Acc't Rend.

25

1898.					
Nov.	3.		To Mdse.	155.36	
	12.		To Mdse.	240.75	
Dec.	3.		To Mdse.	1,553.24	
	20.		To Mdse.	1,976.76	
	23.		To Mdse.	1,999.17	
1899.					
Jan.	9.		To Mdse.	90.26	
	24.		To Mdse.	329.75	
	26.		To Mdse.	31.37	
Feb.	8.		To Mdse.	369.82	
	28.		To Mdse.	21.88	
	28.		To Mdse.	1,424.20	
Mch.	15.		To Mdse.	24.18	
	15.		To Mdse.	82.25	
	24.		To Mdse.	358.24	
	30.		To Mdse.	622.28	
	30.		To Mdse.	83.69	
April	14.		To Mdse.	256.45	
May	15.		To Mdse.	1,556.78	
July	28.	12/17/98	To Mdse.	25.61	
	28.	12/19/98	To Mdse.	6.39	
	28.	12/22/98	To Mdse.	34.42	
					11,242.85

Cr.

1899.					
Dec.	31.	By Freight,		28.84	
	31.	By Freight,		45.22	
	31.	By Freight,		44.71	
	31.	By Freight,		9.75	
	31.	By Freight,		9.43	
1899.					
Jan.	31.	By Freight,		3.22	
Feb.	28.	By Freight,		11.50	
Mch.	31.	By Freight,		.46	
	31.	By Freight,		3.91	
April	29.	By Freight,		22.50	
	29.	By Mdse.		7.00	
	29.	By Freight,		24.96	
	29.	By Freight,		39.33	

May	31.	By Freight,	5.98	
	31.	By Freight,	.69	
Jun.	30.	By Mdse.	1.70	259.20
				10,983.65

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In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Keystone Wall Paper Co.,

To Acc't Rend.

1898.		" Mdse.	
Nov.	7.	To Mdse.	2,371.40
	15.	To Mdse.	1,249.61
	30.	To Mdse.	377.19
Dec.	14.	To Mdse.	742.10
	16.	To Mdse.	221.32
	21.	To Mdse.	619.73
	22.	To Mdse.	7.50
	30.	To Mdse.	330.44
1899.			
Jan.	6.	To Mdse.	583.53
	13.	To Mdse.	348.22
	20.	To Mdse.	405.51
	27.	To Mdse.	562.16
	30.	To Mdse.	400.80
Feb.	6.	To Mdse.	387.74
	27.	To Mdse.	208.54
Mch.	3.	To Mdse.	314.37
	9.	To Mdse.	193.33
	10.	To Mdse.	200.80
	14.	To Mdse.	102.02
	23.	To Mdse.	166.27
	27.	To Mdse.	4.21
	27.	To Mdse.	134.44
April	3.	To Mdse.	4.57
	4.	To Mdse.	46.45
	13.	To Mdse.	16.01
	17.	To Mdse.	113.73
	18.	To Mdse.	210.05
	24.	To Mdse.	42.38
	27.	To Mdse.	297.05
	28.	To Mdse.	42.38
May	2.	To Mdse.	8.70
Jun.	15.	To Mdse.	73.23
			10,785.78

27 Cr.

May 31.	By Mdse.	1.22	
July 31.	" Addl disct.	17.65	
			18.87
			10,766.91

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New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

W. H. Mains & Co.

To Acc't Rend.

1898.	To Mdse.		
Nov. 4.	To Mdse.		143.09
11.	To Mdse.		317.84
17.	To Mdse.		686.77
22.	To Mdse.		1,066.78
29.	To Mdse.		722.10
Dec. 7.	To Mdse.		485.20
9.	To Mdse.		414.23
15.	To Mdse.		1,425.43
21.	To Mdse.		9.34
23.	To Mdse.		142.58
29.	To Mdse.		91.46
1899.			
Jan. 5.	To Mdse.		212.30
12.	To Mdse.		69.33
14.	To Mdse.		161.80
21.	To Mdse.		140.22
27.	To Mdse.		176.07
28.	To Mdse.		90.60
31.	To Mdse.		25.79
Feb. 14.	To Mdse.		58.59
22.	To Mdse.		103.51
23.	To Mdse.		42.25
Mch. 16.	To Mdse		32.30
24.	To Mdse.		39.84
28.	To Mdse.		14.99
April 13.	To Mdse.		25.13

	13. To Mdse.	293.59	
	15. To Mdse.	9.09	
	17. To Mdse.	20.35	
	21. To Mdse.	3.12	
	27. To Mdse.	9.38	
	27. To Mdse.	.63	
May	9. To Mdse.	.83	
June	19. To Mdse.	46.46	
			7,380.99

Cr.

1899.			
Dec.	31. By Freight,	2.58	
		4.40	
		3.51	
		6.04	7,380.99
	Forward	16.53	
		Page 25.	

New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

W. H. Mains & Co.

To Acc't Rend.

To Mdse.

1898.	Forward	16.53	7,380.99
Dec.	31. By Freight,	4.46	
1899.			
Feb.	28. By Freight,	.48	
Mch.	31. By Freight,	.46	
	31. By Freight,	.07	
Aprl	29. By Mdse.	11.95	
	29. By Freight,	.08	
May	31. By Freight,	.02	
	31. By Freight,	.63	
	31. By Freight,	.08	
	31. By Freight,	.07	
		.04	34.87
			7,346.12

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In Account with the
Continental Wall Paper Co.,
1135 Broadway.

Middletown Paper Co.

To Account Rend.

To Mdse.

1898.				
Oct.	11.	To Mdse.	1,516.63	
	29.	To Mdse.	1,926.10	
Nov.	11.	To Mdse.	1,042.87	
Dec.	30.	To Mdse.	1,063.55	
1899.				
Jan.	13.	To Mdse.	56.00	
Feb.	23.	To Mdse.	1,229.36	
Mch.	28.	To Mdse.	156.04	
April	11.	To Mdse.	394.15	
	18.	To Mdse.	119.50	
	22.	To Mdse.	120.38	
May	3.	To Mdse.	21.21	
June	7.	To Mdse.	130.50	
	29.	To Mdse.	200.76	
				7,977.05

Cr.

1898.				
Dec.	31.	By Freight,	52.87	
	31.	By Freight,	33.85	
	31.	By Freight,	44.74	
1899.				
Jan.	31.	By Freight,	.20	
Feb.	28.	By Freight,	25.89	
Mch.	31.	By Freight,	.11	
April	29.	By Freight,	28.01	
May	31.	By Mdse.	.90	
	31.	By Freight,	1.46	
	31.	By Freight,	.42	
	31.	By Freight,	.42	
	31.	By Freight,	1.91	
	31.	By Freight,	1.95	
June	30.	By Mdse.	5.00	
	30.	By Freight,	.08	
	30.	By Freight,	.50	

30

Aug. 31.	By Freight,	1.02	
July 31.	By Mdse.	3.27	
			202.60
			7,774.45

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New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Company,
1135 Broadway.

W. N. Peak.

To Account Rend.

To Mdse.

1898.			
Nov. 22.	To Mdse.	317.70	
Dec. 6.	To Mdse.	295.31	
10.	To Mdse.	63.57	
24.	To Mdse.	12.80	
1899.			
Jan. 18.	To Mdse.	103.69	
Mch. 3.	To Mdse.	8.72	
25.	To Mdse.	.20	
			801.99

Cr.

1898.			
Dec. 31.	By Freight,	1.93	
31.	By Freight,	3.33	
April 29.	By Freight,	.02	
July 31.	By Additional disct.	.30	
			5.58
			796.41

Page 28.

New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Company,
1135 Broadway.

31 Philadelphia Wall Paper Company.

To Account Rend.

To Mdse.

1898.				
Oct.	1.	To Mdse.	3,437.44	
Nov.	22.	To Mdse.	292.95	
Dec.	7.	To Mdse.	915.62	
	28.	To Mdse.	632.05	
1899.				
Jan.	17.	To Mdse.	559.58	
Feb.	7.	To Mdse.	203.55	
	11.	To Mdse.	7.33	
	22.	To Mdse.	4.52	
April	19.	To Mdse.	41.17	
				6,094.21

Page 29.

New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Company,
1135 Broadway.

Tarrytown Wall Paper Co.,

To Account Rend.

To Mdse.

1898.			
Oct.	20.	To Mdse.	1,401.68
Nov.	26.	To Mdse.	1,160.34
Dec.	6.	To Mdse.	1,101.15
	13.	To Mdse.	529.85
	17.	To Mdse.	589.70
	21.	To Mdse.	8.81
	30.	To Mdse.	407.99
1899.			
Jan.	10.	To Mdse.	157.88
	18.	To Mdse.	34.48
	19.	To Mdse.	1,023.73
	19.	To Mdse.	34.48
	26.	To Mdse.	90.98
Feb.	4.	To Mdse.	175.34
	21.	To Mdse.	1,301.15
	28.	To Mdse.	150.73

	27.	To Mdse.	96.24	
Mch.	6.	To Mdse.	66.16	
32				
	7.	To Mdse.	45.23	
	10.	To Mdse.	.37	
	11.	To Mdse.	60.40	
	16.	To Mdse.	187.51	
	18.	To Mdse.	8.78	
	25.	To Mdse.	226.02	
April	13.	To Mdse.	211.25	
	15.	To Mdse.	158.85	
	17.	To Mdse.	117.32	
	24.	To Mdse.	112.00	
May	2.	To Mdse.	5.48	
	13.	To Mdse.	39.94	
	17.	To Mdse.	351.66	
	25.	To Mdse.	1,738.60	
June	12.	To Mdse.	386.60	
	20.	To Mdse.	182.93	
				12,163.63

Cr.

1898.				
Dec.	31.	By Freight,	8.45	
	31.	By Freight,	6.32	
	31.	By Freight,	6.92	
	31.	By Freight,	2.69	
1899.				
Jan.	31.	By Freight,	1.96	
			26.24	12,163.63
			Page 30.	

New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Company,
1135 Broadway.

Tarrytown Wall Paper Co.,

To Account Rend.

To Mdse.

1899.				
		Forward	26.24	12,163.63
Jan.	31.	By Freight,	.19	
	31.	By Freight,	.33	
	31.	By Freight,	1.68	
	31.	By Freight,	.93	
April	29.	By Mdse.	89.10	

33

	29.	By Freight,	3.46	
	29.	By Freight,	.03	
May	31.	By Freight,	.52	
	31.	By Freight,	.42	
	31.	By Freight,	.02	
	31.	By Freight,	.68	
	31.	By Freight,	.26	
	31.	By Freight,	2.54	
July	31.	By Additional disct.	.94	
	31.	By Additional disct.	1.23	
Sept.	30.	By Freight,	2.21	
				130.78
				12,032.85

Page 31.

New York, Nov. 30, 1899.

In Account with the
Continental Wall Paper Company,
1135 Broadway.

Thomas & Davis Co.,

To Account Rend.

To Mdse.

1898.				
Nov.	11.	To Mdse.	2,436.10	
Dec.	12.	To Mdse.	1,831.91	
	29.	To Mdse.	610.25	
1899.				
Jan.	31.	To Mdse.	2,414.82	
Feb.	25.	To Mdse.	962.17	
Mch.	6.	To Mdse.	172.38	
	16.	To Mdse.	38.83	
	18.	To Mdse.	2.70	
	20.	To Mdse.	9.63	
	21.	To Mdse.	164.00	
	29.	To Mdse.	33.83	
April	10.	To Mdse.	743.79	
	18.	To Mdse.	455.34	
May	16.	To Mdse.	59.70	
June	9.	To Mdse.	5.94	
	13.	To Mdse.	69.44	
				10,004.83

34 Cr.

1899.			
Jan. 31.	By Freight,	72.38	
Mch. 31.	By Freight,	54.00	
31.	By Freight,	7.34	
May 31.	By Freight,	7.81	
June 30.	By Additional disct.	7.00	
			148.53
			9,856.30

Page 32.

New York, Nov. 30th, 1899.

In Account with The
The Continental Wall Paper Company,
1135 Broadway.

Williamson Wall Paper Co.,

To Acc't Rend.

1898.	" Mdse.		
Dec. 7.	To Mdse.	766.03	
28.	To Mdse.	639.69	
28.	To Mdse.	12.10	
30.	To Mdse.	694.08	
1899.			
Feb. 3.	To Mdse.	1,417.77	
24.	To Mdse.	434.76	
Mch. 3.	To Mdse.	215.55	
6.	To Mdse.	5.43	
16.	To Mdse.	169.75	
30.	To Mdse.	42.90	
Apr. 1.	To Mdse.	7.15	
3.	To Mdse.	3.30	
17.	To Mdse.	386.36	
20.	To Mdse.	41.82	
May 23.	To Mdse.	317.28	
Jun. 20.	To Mdse.	33.37	
Dec. 31.	By Freight,		5.39
31.	By Freight,		5.40
31.	By Freight,		13.04
Feb. 28.	By Mdse.,		1.13
28.	By Mdse.,		59.91
Mch. 31.	By Freight,		1.07

35

	31. By Freight,	2.80	
	31. By Freight,	6.95	
	31. By Freight,	1.16	
	31. By Freight,	.29	
April	29. By Freight,	.42	
May	31. By Freight,	.06	
	31. By Freight,	.79	
	31. By Freight,	.12	
Aug.	31. By Mdse.,	.11	98.64
			5,088.70

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New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

York Card & Paper Co.,

To Acc't Rend.

To Mdse.

1898.			
Oct.	11. To Mdse.,	364.48	
	19. To Mdse.,	9.52	
Nov.	8. To Mdse.,	2,181.55	
	2. To Mdse.,	.30	
	17. To Mdse.,	2.69	
	19. To Mdse.,	2,283.65	
	28. To Mdse.,	4.11	
	30. To Mdse.,	2,430.37	
Dec.	22. To Mdse.,	3.03	
	30. To Mdse.,	3,173.45	
	30. To Mdse.,	13.75	
1899.			
Jan.	9. To Mdse.,	13.75	
	24. To Mdse.,	2,379.53	
	31. To Mdse.,	1,426.75	
Feb.	10. To Mdse.,	326.96	
	20. To Mdse.,	128.11	
	22. To Mdse.,	276.07	
	28. To Mdse.,	153.74	
Mch.	4. To Mdse.,	293.38	
	9. To Mdse.,	30.29	
	17. To Mdse.,	202.52	
	29. To Mdse.,	3.85	

April 5.	To Mdse.,	43.00	
10.	To Mdse.,	.31	
14.	To Mdse.,	576.36	
36			
21.	To Mdse.,	128.27	
26.	To Mdse.,	126.85	
29.	To Mdse.,	95.09	
May 6.	To Mdse.,	15.50	
12.	To Mdse.,	5.15	
16.	To Mdse.,	3.08	
June 9.	To Mdse.,	117.58	
			16,815.77

Cr.

1899.			
Dec. 31.	By Add. disct.	1.00	
31.	By Mdse.,	126.14	
31.	By Freight,	9.68	
31.	By Freight,	.48	
31.	By Freight,	17.52	
	Forward,	154.82	16,815.77
		Page 34.	

New York, Nov. 30th, 1899.

In Account with the
Continental Wall Paper Co.,
1135 Broadway.

York Card & Paper Co.,

To Acc't Rend.

To Mdse.

1898.			
	Forward,	154.82	16,815.77
Dec. 31.	By Freight,	2.76	
31.	By Freight,	45.74	
1899.			
Feb. 13.	By Mdse.,	833.14	
Mch. 31.	By Mdse.,	80.85	
31.	By Freight,	29.25	
31.	By Freight,	3.00	
May 31.	By Mdse.,	3.34	
31.	By Mdse.,	9.69	
July 31.	By add. dist.,	.54	
		1,163.13	15,652.64
Oct. 1.	9-28 To Mdse.,	1,953.00	
1.	9-28 To Mdse.,	2,006.22	

	1. 9-29 To Mdse.,	1,792.13	
	1. 9-30 To Mdse.,	2,425.89	
	5. To Mdse.,	1,954.56	
	20. To Mdse.,	1,306.06	
Nov.	12. To Mdse.,	643.79	
	21. To Mdse.,	10.60	
	29. To Mdse.,	1,712.63	
37			
Dec.	12. To Mdse.,	1,083.40	
	21. To Mdse.,	1,715.09	
	31. To Mdse.,	2,094.79	
	1899.		
Jan.	20. To Mdse.,	1,371.61	
	24. To Mdse.,	301.13	
	31. To Mdse.,	89.82	
Feb.	22. To Mdse.,	675.08	
	24. To Mdse.,	42.27	
Mch.	9. To Mdse.,	241.85	
	21. To Mdse.,	63.00	
	21. By Mdse.,	39.58	
April	17. To Mdse.,	28.10	
May	16. To Mdse.,	2,115.56	
			23,666.16

Cr.

	1898.		
Dec.	31. By Freight,	30.38	
	31. By Freight,	75.67	
	31. By Freight,	76.59	
	31. By Freight,	75.44	
	31. By Freight,	60.26	
		74.52	
			392.86
			23,273.30

Page 36.

Exhibit "A."

And afterwards, to-wit: on the same day came the plaintiff by its Attorneys, and filed in the Clerk's Office of the Court aforesaid his certain Præcipe in said case which said Præcipe is clothed in the words and figures following, to-wit:

Præcipe.

To Clerk:

Issue summons for defendant returnable according to law. Endorsed action for money, on account. Amount claimed $57,762.10 and interest thereon, from July 29, 1899.

KITTREDGE & WILBY,
GUGGENHEIMER, UNTENMEYER & MARSHALL,
For Plaintiff.

38 And thereupon there was issued out of the Clerk's Office of said Court, our certain Writ of Summons in this case, directed to the Marshal of this District and against the said Defendant, which said summons is clothed in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

The President of the United States of America to the Marshal of the Southern District of Ohio, Greeting:

You are hereby commanded to notify The Lewis Voight & Sons Company, a corporation citizen of and resident in the State of Ohio, if it be found in your District, that it has been sued by The Continental Wall Paper Company, a corporation, Plaintiff, citizen of and resident in the State of New York in the United States Circuit Court, within and for the District and Division aforesaid, at Cincinnati and that unless it answers by the 24th day of March, A. D. 1900, the petition of the said Plaintiff against it filed in the Clerk's Office of said Court, such petition will be taken as true and judgment rendered accordingly.

You will make due return of this summons on the fifth day of March, A. D. 1900.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 24th day of February, A. D. 1900, and in the 124th year of the Independence of the United States of America.

Attest:

B. R. COWEN, *Clerk*,
[SEAL] By ROBERT C. GEORGI, *Deputy*.

And afterwards, to-wit: on the 24th day of February in the year last aforesaid, came the Marshal of said District to whom the said Writ was in *from* directed and returned the same into the Clerk's Office of the Court aforesaid with his proceedings endorsed thereon, clothed in the words and figures following, to-wit:

Marshal's Return.

Received this Writ on the 24th day of February A. D. 1900. And on the 24th day of February A. D. 1900, I served the Lewis

Voight & Sons Company by handing a true copy thereof
39 with the endorsement thereon to Lewis Voight, president of said Lewis Voight & Sons Company personally at his office of Custodian of Government Building, Cincinnati, Ohio, Room 210 Government Building.

VIVIAN J. FAGIN, *Marshal,*
By W. J. SANDERSON, *Deputy.*

Fees, $2.56.

And afterwards, to-wit: on the 24th day of March, A. D. 1900, a motion was filed in the clerk's office of said court clothed in the words and figures, following, to-wit:

No. 5421.

THE CONTINENTAL WALL PAPER COMPANY, Plaintiff,
vs.
THE LEWIS VOIGHT & SONS COMPANY, Defendant.

Motion.

Now comes defendant and moves the court for an order requiring the plaintiff to make its petition more definite and certain in the following particulars, viz:

1. By attaching to the petition a fully itemized account showing each article claimed to have been sold by plaintiff to defendant, and of what the merchandise referred to consisted.
2. By showing at what price each of said articles were sold.
3. By showing upon what terms each of said articles were sold.
4. By showing whether same sold under a contract either express or implied, whether verbally or in writing and if in writing, by attaching a copy of said writing to the petition.

CLEVELAND & BOWLER,
COBB & HOWARD,
Attorneys for Defendant.

And afterwards, to-wit: On the 7th day of April A. D., 1900, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry Journal 5, Page 517.

This cause came on to be heard on the motion of the defendant heretofore filed herein and was submitted to the court after
40 argument by counsel, on consideration whereof:

It is ordered that the motion be granted in part and overruled in part that is to say, that said plaintiff be ordered to make its petition definite and certain in the respects set forth in the first two paragraphs of said motion, and that the remainder of said motion be overruled, to all of which the plaintiff excepts, plaintiff is given 30 days to comply herewith.

And afterwards, to-wit: On the 5th day of May A. D., 1900, an entry was made upon the journal of said court, clothed in the words and figures following, to-wit:

Entry Journal 5, Page 544.

Entry Extending Time to Make Petition Definite and Certain.

For good cause shown, the plaintiff in the above entitled cause is hereby granted thirty (30) days further time from May 7th, 1900, in which to make its petition herein more definite and certain, in accordance with the entry made herein, April 7th, 1900.

And afterwards, to-wit: On the 6th day of June A. D., 1900, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry Journal 5, Page 590.

Entry Granting Further Time, etc.

For good cause shown, the plaintiff in the above entitled cause is hereby granted thirty (30) days further time from June 6th, 1900, in which to make its petition herein more definite and certain, in accordance with the entry made herein, April 7th, 1900.

And afterwards, to-wit: On the 10th day of July A. D., 1900, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry Journal 6, Page 12.

Entry Granting Time to Make Petition More Definite and Certain, to August 15, 1900.

41 The plaintiff above named is hereby granted a further extension of time, to August 15th, 1900, in which to make its petition herein more definite and certain, according to the order of April 7, 1900.

And afterwards, to-wit: On the 29th day of August A. D., 1900, an entry was made upon the journal of said court clothed in the words and figures following, to-wit:

Entry Journal 6, Page 33.

The plaintiff is hereby given leave to file its amendment to its petition heretofore ordered to be made, and the same is now filed.

And afterwards, to-wit: on the 29th day of August, A. D., 1900, the following amendment to petition was filed in the clerk's office of the court aforesaid, which said amendment to petition is clothed in the words and figures, following, to-wit:

Amendment to Petition.

United States Circuit Court, Southern District of Ohio, Western Division.

No. 5421.

THE LEWIS VOIGHT & SONS COMPANY, Defendant,
vs.
THE CONTINENTAL WALL PAPER COMPANY, Plaintiff.

Amendment to Petition.

Now comes The Continental Wall Paper Company, Plaintiff above named, and pursuant to the order of court to make its petition herein more definite and certain, and by leave of court, files this, its amendment to its petition, as follows:

It hereto attaches and makes part of this amendment and
42 of the original petition, a fully itemized account showing each article sold and delivered by said plaintiff to said defendant included in the account and exhibits attached to said original petition; said itemized account herein referred to and hereto attached, is in the form of lists or schedules marked consecutively from 1 to 27, inclusive; and each and every of said schedules constituting the itemized account herein referred to, consists of and shows in detail the items of charge for merchandise sold and delivered by said plaintiff to said defendant shown and described in the debit items of the several schedules attached to the original petition; and the twenty-five schedules and itemized statements of account attached to this amended petition, marked "3" to "27," inclusive, are in the order of and correspond to the twenty-five schedules marked "pages 3 to 36," inclusive attached to the original petition herein; and the schedules and itemized statements of accounts attached to this amendment, marked "1" and "2," correspond to and itemize the first two items on "Exhibit A," attached to the original petition herein.

Said itemized schedules showing the items of charge in said account also show the price at which each of said articles named in said account was sold; and each and every of the articles of merchandise referred to in the original petition and show in the schedules attached to this amendment to the petition, was and consisted of wall paper, of various kinds and descriptions, as is particularly indicated in said schedules and itemized account hereto attached.

Plaintiff hereby refers to the original petition herein, and makes this amendment part hereof, and asks judgment as prayed for in said original petition.

KITTREDGE & WILBY,
Attorneys for Plaintiff.

STATE OF NEW YORK, *County of New York, ss:*

Robert J. Dyatt being first duly sworn, says that he is secretary of said plaintiff, The Continental Wall Paper Company, and that the statements contained in the foregoing amendment to petition, are true, as he verily believes.

ROBT. J. DYATT.

Subscribed in my presence and sworn to before me, this twenty-seventh day of August, A. D. 1900.

[SEAL.] H. LOWENTHAL,
Notary Public, No. 120, N. Y. County.

43 St. Louis (Cincinnati) Jobbing Department.

Grade	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.
		March 1st, 1899.			
White	100	5	5.00	25	3.75
Border	12	15	1.80	35	1.17
					$4.92

Cincinnati Jobbing Department.

Grade	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.
		May 31, 1899.			
10 oz. Brze.	2	10	.20	35	.13
					$ .13

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F. Beck & Co.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
		Sep. 24, 1898.				
Exclusive. Pressed,	10	1.00	10.00	20	8.00	$8.00
		Sept. 30th.				
Var. Tile,	200	20	40.00	30	28.00	28.00
		Oct. 8th.				
Exclusive,	24	90	21.60	20	17.28	
Exclusive,	6	1.75	10.50	20	8.40	
	Case		.95		.95	26.63
		Nov. 12th.				
10 oz. Gilt,	432	9	38.88	35	25.27	
	1520	8	121.60	32 1-2	82.08	
Whites,	86	6 1-2	5.59	27 1-2	4.05	
Var. Tiles,	200	20	40.00	30	28.00	
1 Bd. Gilt,	12	30	3.60			
	250	30	75.00			
2 Bd. Gilt,	56	25	14.00			
1 Bd. Glim,	14	23	3.22	40	57.49	$196.89

THE LEWIS VOIGHT & SONS CO.

45

F. Beck & Co.—Cont.

Nov. 22nd.

10 oz. Gilt.	924	8	73.92	32 1-2	49.90	
10 oz. Glim.	536	9	48.24	35	31.36	
12 oz. Gilt,	50	11	5.50	37 1-2	3.44	
	32	10	3.20	37 1-2	2.00	
1 Bd. B. Gilt,	12	40	4.80	45	2.64	
1 Bd. Glim,	122	30	36.60	40	21.96	
1 Bd. Gilt,	134	35	46.90	40	28.14	
						$139.44

Dec. 8th.

Var. Tiles,	224	20	44.80	30	31.36	
Var. Tiles Bor.	10	50	5.00	45	2.75	
12 oz. Gilt,	700	11	77.00			
	2126	10	212.60	37 1-2	181.00	
10 oz. Gilt,	50	10	5.00			
	30	9	2.70	35	5.01	
2 Bd. Gilt,	186	30	55.80	40	33.48	
1 Bd. B. Gilt,	200	40	80.00	45	44.00	
						$297.60

Dec. 27th.

10 oz. Gilt,	200	10	20.00	35	13.00	

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F. Beck & Co.—Cont.

	132	9	11.88	35	7.72	
12 oz. Gilt,	24	11	2.64			
	16	10	1.60	37 1-2	2.65	
Emb. Gilt,	100	15	15.00	45	8.25	
Emb. Gilt,	66	12 1-2	8.25	40	4.95	
Var. Tiles,	56	20	11.20	30	7.84	
1 Bd. B. Gilt,	50	40	20.00			
	6	40	2.40			
1 B. E. Gilt,	26	50	13.00	45	19.47	
						$63.88

Dec. 29th.

12 oz. Gilt,	2100	12 1-2	262.50	40	157.50	
	1[illegible]0	10	112.00	37 1-2	70.00	
1 Bd. B. Gilt,	[illegible]	45	270.00	45	148.50	
						376.00

Dec. 21st, 1898.

12 oz. Gilt,	250	11	27.50	37 1-2	17.19	
1 Bd. B. Gilt,	150	40	60.00	45	33.00	
						50.19

F. Beck & Co.—Cont.

Jan. 5th, 1899.

12 oz. Gilt,	50	11	5.50	37 1-2	3.44	
1 Bd. B. Gilt,	50	40	20.00	45	11.00	
						14.44

Jan. 7th.

10 oz. Gilt,	80	9	7.20	35	4.68	
12 oz. Gilt,	200	12 1-2	25.00	40	15.00	
	120	10	12.00			
	2400	11	264.00	37 1-2	172.50	
Var. Tiles,	200	20	40.00	30	28.00	
1 Bd. Gilt,	12	30	3.60	40	2.16	
1 B. Gilt,	50	45	22.50			
	200					
	150	40	140.00	45	89.38	
						311.72

Jan. 25th.

10 oz. Gilt,	50	10	5.00			
	50	9	4.50	35	6.18	
22 oz. Gilt,	266	20	53.20	45	29.26	
Var. Tiles,	124	20	24.80	30	17.36	
1 Bd. B. Gilt,	14	40	5.60	45	3.08	
	42	60	25.20	50	12.60	
						68.48

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F. Beck & Co.—Cont.

Feb. 2nd.

Var. Tiles,	734	20	146.80	30	102.76	
Var. Tiles Bor.	54	50	27.00	45	14.85	
						$117.61

Feb. 23rd.

Var. Tiles,	246	20	49.20	30	34.44	
12 oz. Gilt,	910	10	91.00			
	400	11	44.00	37 1-2	84.38	
22 in. Gilt,	42	20	8.40	45	4.62	
22 Emb. Damk.	42	25	10.50	37 1-2	6.56	
Emb. Gilt,	200	15	30.00	45	16.50	
	122	12 1-2	15.25	40	9.15	
1 Bd. B. Gilt,	50	50	25.00	45	13.75	
1 Bd. B. Damk.	6	70	4.20			
1 Bd. B. Gilt,	6	60	3.60	50	3.90	
	122	40	48.80	45	26.84	
2 Bd. Gilt,	80	30	24.00	40	14.40	
						214.54

Feb. 24th.

Emb. Gilt,	50	13 1-2	6.75			
	50	12 1-2	6.25	40	7.80	

F. Beck & Co.—Cont.

10 oz. Gilt,	50	10	5.00			
	30	9	2.70	35	5.01	
	2666	8	213.28	32 1-2	143.97	
Var. Tiles,	98	20	19.60	30	13.72	
Emb. Flat,	590	13 1-2	79.65	35	51.78	
1 Bd. B. E. Gilt,	12	45	5.40			
1 Bd. B. Gilt,	12	40	4.80	45	5.61	
	574	35	200.90	40	120.54	
						$348.43

Feb. 25th.

10 oz. Gilt,	950	8	76.00	32 1-2	51.30	
1 Bd. Gilt,	200	30	60.00	40	36.00	
						87.30

March 3rd, 1899.

Var. Tile,	24	20	4.80	30	3.36	
10 oz. Gilt,	182	8	14.56	32 1-2	9.83	
	70	10	7.00			
	42	9	3.78	35	7.01	
12 oz. Gilt,	240	10	24.00	37 1-2	15.00	

THIS PAGE BOUND VE

F. Beck & Co.—Cont.

1 Bd. B. Gilt,	92	45	41.40			
	20	40	8.00	45	27.17	
2 Bd. Gilt,	6	25	1.50	40	.90	
						63.27
			March 11th.			
Var. Tile,	236	20	47.20	30	33.04	
Var. Tile Bor.	18	50	9.00			
Emb. Gilt,	272	20	60.40	45	38.17	
						71.21
			March 17th.			
12 oz. Gilt,	765	11	84.15	37 1-2	52.60	
12 Glim,	464	9	41.76	32 1-2	28.19	
Emb. Satin,	52	30	15.60			
	16	25	4.00	37 1-2	12.25	
1 Bor. B. E. Satin,	6	75	4.50	50	2.25	
Bor. B. Gilt,	206	40	82.40	45	45.32	
Bor. B. Glim,	78	30	23 40	40	14.04	
						154.65
			March 29th.			
12 oz. Flat,	26	15	3.90	37 1-2	2.44	
	16	10	1.60	32 1-2	1.08	

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THE LEWIS VOIGHT & SONS CO.

RTICAL IN BOOK

F. Beck & Co.—Cont.

12 oz. Gilt,	302	12 1-2	37.75	40	22.65	
	232	10	23.20	37 1-2	14.50	
Var. Tile,	250	20	50.00	30	35.00	
Var. Tile Bdr.	18	50	9.00			
1 Bd. Flat,	6	40	2.40			
1 Bd. B. Gilt,	126	45	56.70			
	18	40	7.20	45	41.42	
						$117.09
			April 7th.			
Emb. Satin,	52	30	15.60			
	16	25	4.00	37 1-2	12.25	
Emb. Gilt,	26	20	5.20			
	18	18	3.24	45	4.65	
12 oz. Gilt,	170	10	17.00			
12 oz. Glim,	32	9	2.88	37 1-2	13.42	
1 Bd. B. Glim,	26	30	7.80	40	4.68	
1 B. Satin,	6	75	4.50			
1 B. Gilt,	6	55	3.30	50	3.90	
1 Flat,	18	30	5.40	40	3.24	
						42.14
			April 12th.			
10 oz. Gilt,	350	8	28.00	32 1-2	18.90	
						18.90

THIS PAGE BOUND VE

TICAL IN BOOK

F. Beck & Co.—Cont.

April 14th.

10 oz. Gilt,	500	8	40.00	32 1-2	27.00	
22 oz. Emb. Gilt,	40	18	7.20			
1 Bd. B. E. Gilt,	6	55	3.30	45	5.78	
	72	30	21.60	40	12.96	
Var. Tile,	50	20	10.00	30	7.00	
						52.74

April 20th.

12 oz. Gold,	1600	10	160.00	37 1-2	100.00	
1 Bd. B. Gold,	6	40	2.40	45	1.32	
2 Bd. B. Gold,	114	30	34.20	40	20.52	
						121.84

April 20th, 1899.

1 Bd. B. Gilt,	10	40	4.00	45	2.20	
						2.20

April 24th.

12 oz. Gilt,	86	11	9.46	37 1-2	5.91	

53

	48	20	9.60			
	30	15	4.50	45	7.76	
1 Bd. B. Gilt,	10	60	6.00	50	3.00	
Var. Tile,	46	20	9.20	30	6.44	
						23.11
			May 3rd.			
12 oz. Gilt,	98	11	10.78	37 1-2	6.74	
	126	10	12.60	37 1-2	7.88	
1 Bd. B. Gilt,	14	45	6.30	45	3.47	
						18.09
			May 12th.			
Var. Tile,	100	20	20.00	30	14.00	
Var. Tile Bor.	13	50	6.50	45	3.58	
						17.58
			Total,			$3051.97

Benton, Heath & Co.,

Grade,	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.
			Oct. 10th.		
Wht. Blk.	8700	5	435.00	30	304.50
	6500	5 1-2	357.50	30	250.25
	6400	6	384.00	30	268.80

THIS PAGE BOUND VE

Benton, Heath & Co.—Cont.

	3000	5½	165.00	30	115.50	
Wht. Blk. Bdr.	200	15	30.00	40	18.00	
	900	18	171.00	45	94.05	
	500	25	125.00	45	68.75	
	1200	28	336.00	45	184.80	
						$1,304.65
			Oct. 20th.			
Wht. Blk.	3000	5	150.00	30*	105.00	
	11400	5½	627.00	30*	438.90	
	2400	6	144.00	30*	100.80	
	650	15	97.50	40*	58.50	
	500	18	90.00	45*	49.50	
	400	28	112.00	45*	61.60	
						$814.30
			Oct. 21st.			
W. Blk. Side	2000	5½	110.00			
W. Ceil	1000	5½	55.00	30*	115.50	
W. Bord.	250	15	37.50	40*	22.50	
						$138.00
			Nov. 9th.			
Wht. Blk.	3600	5	180.00	30*	126.00	
	9380	5½	515.90	30*	361.13	

THE LEWIS VOIGHT & SONS CO.

RTICAL IN BOOK

Benton, Heath & Co.—Cont.

	3926	6	235.56	30*	164.89	
	764	6½	49.66	32½*	33.52	
12 oz. Golds	226					
Wht. Blk.	4000	7	295.82	35*	192.28	
	50	7½	3.75	35*	2.24	
	50					
10 oz. Golds	160	8	16.80	37½*	10.50	
Wht. Blk. Bdr.	442	15	66.30	40*	39.78	
	130	18	23.40			
10 oz. Golds	12	20	2.40			
Wht. Blk. Bdr.	68	22	14.96			
	200					
10 oz. Golds	6	25	51.50			
Wht. Blk. Bdr.	1852	28	518.56	45*	335.95	
10 oz. Golds Bd.	14					
Wht. Blk.	24	30	11.40	45*	6.27	
						$1,272.76

Nov. 12th.

Wht. Blk. Ceil	100	5½	5.50	30*	3.85	
Side	150	6	9.00	30*	6.30	
Side	2350					
Ceil,	1250	6½	234.00	32½*	157.95	
Side Glim	100					

THIS PAGE BOUND VER

F. Beck & Co.—Cont.

Ceil	600	7½	52.50	35*	34.13	
Side	1000	9	90.00	40*	54.00	
Side Emb. Gold	500	12½	62.50	45*	34.38	
	200	15	30.00	50*	15.00	
	100	18	18.00	45*	9.90	
Bd. B. Wht. Blk.	656	28	183.68	45*	101.02	
Bdr. Glim. B.	274	30	82.20	45*	45.21	
						$461.74

Nov. 16, 1898.

W. Blk. Side	200					
Ceil	100	5½	16.50	30*	11.55	
Side	5350					
Ceil	1996	6½	477.49	32½*	322.31	
Ceil	800	6	48.00	30	33.60	
10 oz. Gold Side	300					
Ceil	200	8	40.00	37½*	25.00	
	600	12½	75.00	30	52.50	
Ingrain	14					
W. Blk. Bord.	12	15	3.90	40*	2.34	
W. Blk. Bord.	200	22	44.00			
W. B. Bord.	976	28	273.28			
10 oz. Gold Bord	42	30	12.60	45*	181.44	
						$628.74

THE LEWIS VOIGHT & SONS CO.

ERTICAL IN BOOK

Benton, Heath & Co.—Cont.

Nov. 18th.

Side Wht. Blk.	1250				
Ceil	1064	5½	127.27	30*	89.09
Side	50	6	3.00	30*	2.10
	800	6½	52.00	32½*	35.10
Ceil Gold	50				
Side 10 oz. Gold	100	7	10.50	35*	6.83
Side	50				
Ceil	30	8	6.40	37½*	4.00
Side Fl. 12 oz.	30				
Ceil	6				
Ceil Glim	30	10	6.60	37½*	4.13
Ceil Gold	550	10	55.00	42½*	31.63
Ceil Gold	950	11	104.50	42½*	60.09
Side Glim	50	12½	6.25	40*	3.75
12 oz. Gold. S.	1824				
12 oz. Gold Ceil	716				
Side Emb. Gt.	1050	12½	448.75	45*	246.82
	14	13½	1.89	45*	1.04
Side Fl. 12 oz.	12	15	1.80	42½*	1.04
Side Gold	50	15	7.50	50*	3.75
Side Emb. Gt.	650	20	130.00	50*	65.00
	650	18	117.00	50*	58.50
Bdr. W. Blk.	36	15	5.40	40*	3.24

THIS PAGE BOUND WI

Benton, Heath & Co.—Cont.

	106	22	23.32	45*	12.83	
	400					
Bdr. Gold 10 oz.	12	25	103.00	45*	56.65	
Bdr. Wht. Blk.	14	28	3.92	45*	2.16	
Bdr. Gold 10 oz.	8	30	2.40	45*	1.32	
Bdr. Fl. 12 oz.	6	35	2.10	45*	1.16	
Bdr. Glim B.	14					
Bdr. Gold Bld.	4	40	7.20	50*	3.60	
Bdr. Gold B. 12 oz.	500					
Bdr. Emb. Gold B.	300	45	360.00	50*	180.00	
	2	50	1.00	50*	.50	
Bdr. Emb. Gold	200	55	110.00	50*	55.00	
Bdr. Emb. Gold	200	60	120.00	55*	54.00	
						$983.33

Nov. 25, 1898.

Side Wht. Blk.	100					
Ceil	136	5½	12.98			
Side	100	6	6.00	30*	13.28	
Ceil	1022					
Side	1500	6½	163.93	32½*	110.65	
Side	550					
Side Glim	26					
Ceil	14	7½	44.25	35*	28.76	

THE LEWIS VOIGHT & SONS CO.

Benton, Heath & Co.—Cont.

Ceil Gold 12	904	12½	113.00	45*	62.15	
Side Fl. 12 oz.	100					
Ceil	50	12½	18.75	40*	11.25	
Side Emb. Gold	50	12½	6.25			
Side Gold	1050	13½	141.75	45*	81.40	
Side Emb. Gold	750	15	112.50	50*	56.25	
Bdr. Wht. Blk.	12	15	1.80	40*	1.80	
	50	18	9.00			
	8	22	1.76			
	24	25	6.00			
	306	28	85.68			
	58	30				
Bdr. Glim B.	8	30	19.80	45*	67.24	
Bdr. Gold B.	200					
Bdr. Fl. B.	26	40	90.40			
Bdr. Emb. Gold	180	50	90.00	50*	90.20	
Bdr. Wht. Blk. B.	50	18	9.00	45*	4.95	
						$527.21

Nov. 26th.

Wht. Blk.	230	5	11.50			
	20.92	5½	115.06			
	992	6	59.52	30*	130.26	
	1824	6½	118.56	32½*	80.02	

THIS PAGE BOUND VER

Benton, Heath & Co.—Cont.

12 oz. Flat	32	10	3.20	37½*	2.00	
	50	12½	6.25	40*	3.75	
12 oz. Golds	46	12½	5.75	45*	3.16	
Emb. Golds	40	16	6.40			
	32	18	5.76	50*	6.08	
Bdr. Wht. Blk.	68	15	10.20	40*	6.12	
	18	18	3.24			
	6	25	1.50			
	190	22	41.80	45*	25.60	
	244	28	68.32	45*	37.58	
Bdr. Emb. Gold	10	50	5.00			
	8	55	4.40	50*	4.70	
						$299.27

Nov. 29th.

W. Blk. Side	2400					
Ceil.	1504	5	195.20			
Side,	100					
Ceil.	652	5½	41.36			
Side,	1000	6	60.00	30*	207.59	
Bord.	174	15	26.10	40*	15.66	
B. Bord.	190	18	34.20			
B. Bord.	416	28	116.48	45*	82.87	
						$306.12

THE LEWIS VOIGHT & SONS CO.

RTICAL IN BOOK

Benton, Heath & Co.—Cont.

			Dec. 3, 1898.			
Pl. Ing.	30	12 1-2	3.75	30	2.63	$2.63
			Dec. 7th.			
12 oz. Flat Ceil.	388	10	38.80	37 1-2*	24.25	
12 oz. Golds,	100					
Ceil.	70	10	17.00	42 1-2*	9.78	
12 oz. Flats,	368	12 1-2	46.00	40*	27.60	
	364	15	54.60	42 1-2*	31.40	
Bdr. Flat,	34	35	11.90	45*	6.55	
	106	40	42.40			
12 oz. Golds,	26	40	10.40			
12 oz. Flats,	28	45	12.60	50*	32.70	$132.28
			Dec. 9th.			
W. Blk. Side,	7100					
Ceil.	2314	5	470.70	30*	329.49	
10 oz. Gold Side,	100					
10 oz. Gold Ceil.	50	7	10.50	35*	6.83	
12 oz. Gold Side,	50					
Ceil.	26	10	7.60			
12 oz. Gold Side,	300					
Ceil.	230	11	58.30	42 1-2*	37.90	
W. Blk. Bor.	848	15	127.20	40*	76.32	

THIS PAGE BOUND VE

Benton, Heath & Co.—Cont.

W. B. Bor.	12	18	2.16			
10 oz. Gold Bor.	12	20	2.40	45*	2.51	
12 oz. Gold B. Bor.	92	40	36.80	50*	18.40	
						$471.45
			Dec. 12th.			
Prin. Ing. Side,	10	13 1-2	1.35	45*	.75	
						$ .75
			Dec. 13th.			
Wht. Blk.	1800	5	90.00			
	3156	5 1-2	173.58			
	400	6	24.00	30*	201.31	
	596	6 1-2	38.74	32 1-2*	26.15	
	740	7	51.80	35*	33.67	
10 oz. Golds,	100	10	10.00	37 1-2*	6.25	
12 oz. Flat,	150	15	22.50	42 1-2*	12.94	
	218	15	32.70	40*	19.62	
Bdr. Wht. Blk.	30	20	6.00			
10 oz. Golds,	14	18	2.52			
Bdr. Wht. Blk.	6	22	1.32			
Wht. Blk.	220	25	55.00			
	24	25	6.00			
10 oz. Golds,	140	28	39.20	45*	60.53	
Wht. Blk. Bdr.	40	40	16.00	50*	8.00	
12 oz. Flat,						$368.47

THE LEWIS VOIGHT & SONS CO.

Benton, Heath & Co.—Cont.

Dec. 14th.

Side Wht. Blk.	2020	5 1-2	111.10	30*	77.77	
Glimmer,	60	7 1-2	4.50			
	382	8 1-2	32.47	35*	24.04	
	100	9	9.00			
	624	10	62.40	37 1-2*	44.63	
12 oz. Golds,	1666	11	183.26	42 1-2*	105.37	
	2300	13 1-2	310.50			
Emb. Golds,	850	13 1-2	114.75	45*	233.89	
Wht. Blk.	6	15	.90	40*	.54	
	160	18	28.80			
Glimmer,	24	30	7.20			
	160	35	56.00	45*	50.60	
12 oz. Gold,	750	45	337.50			
Emb. Golds,	250	45	112.50	50*	225.00	
						$761.84

Dec. 19th.

12 oz. Gold Ceil.	50	13 1-2	6.75	45*	3.72	
12 oz. Side,	50	15	7.50			
12 oz. B. Bord.	50	50	25.00	50*	16.25	
						$19.97

THIS PAGE BOUND VER

Benton, Heath & Co.—Cont.

December 21st.

Ceil Wht. Blk.	600	5	30.00			
	1564	5 1-2	86.02			
	100	6	6.00	30*	85.42	
	152	6 1-2	9.88	32 1-2*	6.67	
10 oz. Golds,	750	8	60.00	37 1-2*	37.50	
	916	9	82.44			
	1600	10	160.00			
	3100	11	341.00	40*	350.07	
Wht. Blk. Bdr.	104	15	15.60	40*	9.36	
	12	22	2.64			
	24	28	6.72			
10 oz. Golds	68	30	20.40			
	116	35	40.60	45*	38.70	
	830	40	332.00	50*	166.00	
						$693.72

Dec. 28th.

Ceil. Wht. Blk.	2200					
Wht. Blk.	3550	5	287.50			
	720	5 1-2	39.60			
	450	6	27.00	30*	247.87	
	2150	6 1-2	139.75	32 1-2*	94.34	
10 oz. Gold,	538	9	48.42	40*	29.06	

65

Benton, Heath & Co.—Cont.

12 oz. Golds,	80	10	8.00	40*	4.80	
12 oz. Flats,	38	10	3.80	37 1-2*	2.38	
10 oz. Gold,	106	11	11.66	42 1-2*	6.71	
12 oz. Flat,	60	15	9.00	42 1-2*	5.18	
Wht. Blk. Bdr.	790	15	118.50	40*	71.10	
	14	18	2.52	45*	1.39	
	396	28	110.88			
10 oz. Golds,	80	35	28.00	45*	76.39	
12 oz. Golds,	14	40	5.60			
10 oz. Golds,	24	40	9.60			
12 oz. Flats,	14	45	6.30	50*	10.75	
						$549.97

Dec. 29th.

W. B. Side,	3000	5	150.00	30*	105.00	
B. Side,	100					
B. Ceil,	58	6 1-2	10.27	32 1-2*	6.94	
12 oz. Gold,	26	10	2.60	42 1-2*	1.50	
	16	13 1-2	2.16			
Emb. Gold Side,	50	13 1-2	6.75	45*	4.91	
	24	18	4.32	50*	2.16	
W. Blk. B. Bord.	28	28	7.84	45*	4.32	
Emb. Gold B. Bord.	12	45	5.40			

THIS PAGE BOUND VER

Benton, Heath & Co.—Cont.

	6	55	3.30	50*	4.35	
						$129.18
			Dec. 31st, 1898.			
12 oz. Gold,	252	11	27.72	42 1-2*	15.94	
10 oz. Flats	350	12 1-2	43.75	40*	26.25	
Golds,	1196	13 1-2	161.46			
Printed Ing.	450	13 1-2	60.75	45*	122.22	
Tap Flat,	600	15	90.00			
	200	18	36.00	42 1-2*	72.45	
12 oz. Golds,	524	15	78.60			
Emb. Golds,	1500	20	300.00			
	662	22	145.64	50*	262.12	
Tap. Flat Bdr.	134	45	60.30			
Bdr. Gold B.	112	50	56.00			
Tap. Flat,	50	55	27.50	50*	71.90	
Emb. Gold Bdr.	452	60	271.20			
	200	65	130.00	55*	180.54	
						751.42
			Jan. 3rd, 1899.			
10 oz. Gold,	50					
10 oz. Ceil.	100	7	10.50	35*	6.83	
10 oz. B. Bor.	50	25	12.50	45*	6.88	
						13.71

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THE LEWIS VOIGHT & SONS CO.

RTICAL IN BOOK

Benton, Heath & Co.—Cont.

Jan. 4th.

20 oz. Lgd. Ceil.	730	12 1-2	91.25			
Ptd. Ing. Side,	500	13 1-2	67.50	45*	87.32	
	600	20	120.00	50*	60.00	
Ing. Bor.	542	55	298.10	50*	149.05	
						$296.37

Jan. 6th.

Print. Ing. Side,	12	13 1-2	1.62	45*	.90	.90

Jan. 11th.

Wht. Blk.	2826	5 1-2	155.43	30*	108.81	
	1300	6 1-2	84.50	32 1-2*	57.04	
10 oz. Golds,	500	8	40.00	37 1-2*	25.00	
	150	9	13.50	40*	8.10	
Glimmer,	400	10	40.00	37 1-2*	25.00	
Pl. Ing.	2048	12 1-2	256.00	30	179.20	
Wht. Blk. Bdr.	8	15	1.20	40*	.72	
Wht. Blk. Bdr.	150	18	27.00			
	150	22	33.00			
10 oz. Golds,	12	25	3.00			
	40	30	12.00			

THIS PAGE BOUND VER

Benton, Heath & Co.—Cont.

Glimmer,	64	35	22.40	45*	53.57	
			Jan. 18th.			$457.44
W. Blk. Ceil.	350	5 1-2	19.25			
	576					
Side,	750	6	79.56	30*	69.17	
10 oz. Gold Side,	2200					
Ceil	1386					
W. Blk. Side,	600	7	293.02	35*	190.47	
10 Gold Side,	100					
Ceil,	60	9	14.40	40*	8.64	
12 oz. Flat Side,	750					
Ceil,	450	10	120.00	42 1-2*	69.00	
Emb. Gold Side,	42	13 1-2	5.67			
10 oz. Gold B. Bor.	356	25	89.00			
W. Blk. B. Bor.	336	28	94.08			
10 oz. G. B. Bor.	12	30	3.60			
12 oz. Flat,	196	35	68.60	45*	143.53	
			Jan. 21st, 1899.			$480.81
Wht. Blk.	170	5	8.50			
	1382	5 1-2	76.01			

Benton, Heath & Co.—Cont.

			4.20	30*	62.10	
	70	6	42.00			
	600	7	31.36			
	448	7	2.40	.35*	49.25	
10 oz. Golds,	32	7 1-2	54.08	37 1-2	33.80	
Glimmer,	676	8	4.25	35*	2.77	
10 oz. Golds,	50	8 1-2	1.60			
Glimmer,	16	10	1.76	42 1-2*	1.94	
12 oz. Golds,	16	11	3.60			
	24	15	4.32			
	24	18	150.60	50*	79.26	
	1004	15	19.20	40*	11.52	
Ingrain 22 Golds,	128	15	2.88			
Wht. Blk. Bdr.	16	18	1.20			
	6	20	30.72			
10 oz. Golds,	324	28	3.96			
Wht. Blk. Bdr.	18	22	4.80			
	16	30	24.00	45*	70.16	
Glimmer,	80	30	2.50			
10 oz. Golds,	5	50	2.50			
12 oz. Golds,	5	50	310.20	50*	157.60	
	564	55	1.80	45*	.99	
Ing. Bdr.	6	30				$469.39
10 oz. Golds,						

THIS PAGE BOUND VES

Benton, Heath & Co.—Cont.

Jan. 25th.

W. Blk. Ceil.	682	5 1-2	37.51			
Blk. Side,	1250	6	75.00	30*	78.76	
12 oz. Go. Ceil.	20	11	2.20	42 1-2*	1.27	
Glim Gold,	100	7 1-2	7.50	35*	4.88	
12 oz. Gold Side,	32	13 1-2	4.32	45*	2.38	
W. Blk. Bord.	4	15	.60	40*	.36	
W. B. Bord.	346	28	96.88			
Glim B. Bord.	40	30	12.00	45*	59.89	
12 oz. Gold B. Bord.	8	45	3.60	50*	1.80	
						$149.34

Jan. 31st. (13th.)

Wht. Blk.	6850	5	342.50			
	1122	5 1-2	61.71			
	384	6	23.04	30*	299.08	
	1000	7	70.00			
10 oz. Golds,	400	7	28.00			
Glimmer,	120	7 1-2	9.00	35*	69.55	
	200	9	18.00	37 1-2*	11.25	
10 oz. Gold,	150	10	15.00	40*	9.00	
12 oz. Flats,	50	10	5.00	37 1-2*	3.13	
	128	12 1-2	16.00	40*	9.60	

Benton, Heath & Co.—Cont.

Ingran,	118	12 1-2	14.75	45*	8.12	
	708	15	106.25	50*	53.10	
Tap Flat,	100	15	15.00	42 1-2*	8.63	
Emb. Golds,	42	15	6.30	50*	3.15	
Wht. Blk. Bdr.	408	15	61.20	40*	36.72	
	312	18	56.16			
	8	22	1.76			
	72	28	20.16	45*	42.94	
Wht. Blk. Bdr.	250	28	70.00			
Glimmer,	50	30	15.00	45*	46.75	
						$601.02

Jan. 31st, 1899.

10 oz. Gold,	54	40	21.60			
Tap Flat	20	45	9.00			
Ing. Bdr.	350	55	192.50	50*	111.55	
						$111.55

Feb. 2nd.

W. B. Side,	1250					
Ceil,	330	5 1-2	86.90	30*	60.83	
12 oz. Gold,	500	13 1-2	67.50	45*	37.13	
12 oz. Side,	1050	15	157.50	50*	78.75	
W. B. Side,	152	15	22.80	40*	13.68	
12 oz. Gold B.	282	50	141.00	50*	70.50	
						$260.89

THIS PAGE BOUND VER

Benton, Heath & Co.—Cont.

			Feb. 4th.			
Wht. Blk.	200	5 1-2	11.00	30*	7.70	
	320	6 1-2	20.80	32 1-2*	14.04	
12 oz. Golds,	430	10	43.00	42 1-2*	24.73	
	984	12 1-2	123.00	45*	67.65	
Tap Flat,	44	12 1-2	5.50	40*	3.30	
Emb. Golds,	172	15	25.80			
Ing. 22 Emb. Golds,	306	15	45.90	50*	35.85	
Tap Flats,	22	15	3.30	42 1-2*	1.90	
Wht. Blk. Bdr.	20	18	3.60	45*	1.98	
12 oz. Flats,	16	10	1.60	42 1-2*	.92	
Emb. Golds,	66	18	11.88	50*	5.94	
Wht. Blk. B. Bdr.	6	28	1.68	45*	.92	
12 oz. Golds,	14	40	5.60			
	168	45	75.60			
Tap Flats,	10	45	4.50			
Emb. Golds,	138	50	69.00			
Ingrain,	300	55	165.00	50*	159.85	
						$324.78
			Feb. 8th.			
W. Blk. Side,	200					
Ceil.	250	6 1-2	29.25	32 1-2*	19.75	
Side,	150	7 1-2	11.25	35*	7.32	
12 oz. Go. Ceil.	382	12 1-2	47.75	45*	26.27	

Benton, Heath & Co.—Cont.

Side,	400	15	60.00			
	236	18	42.48	50*	51.24	
W. Blk. Bord.	16	22	3.52			
	6	25	1.50			
	50	28	14.00			
	26	30	7.80	45*	14.76	
12 oz. Gold Bord.	100	50	50.00			
	44	55	24.20	50*	37.10	$156.44
			Feb. 11th.			
Pl. Ing.	50	12 1-2	6.25	30	4.38	
22 Pl. Ing. Ceil.	50	15	7.50			
Ing. Bor.	50	55	27.50	50*	17.50	$21.88
			Feb. 16th.			
Pl. Ing.	650	12 1-2	81.25	30	56.88	
Ing.	82	12 1-2	10.25	45*	5.64	
22 Ing.	516	15	77.40			
Ing. Bdr.	280	55	154.00	50*	115.70	$178.22
			Feb. 16th. 1899.			
Wht. Blk.	2750	5 1-2	151.25			

THIS PAGE BOUND VER

Benton, Heath & Co.—Cont.

	250	6	15.00	30*	116.38	
	604	6 1-2	39.25	32 1-2*	26.50	
12 oz. Golds,	88	11	9.68	42 1-2*	5.57	
12 oz. Flats,	160	12 1-2	20.00	40*	12.00	
12 oz. Golds,	290	12 1-2	36.25			
Emb. Gt.	150	13 1-2	20.25	45*	31.08	
	150	18	27.00			
	150	20	30.00	50*	28.50	
Wht. Blk. Bdr.	400	25	100.00			
	194	28	54.32	45*	84.88	
12 oz. Flats,	26	40	10.40			
Emb. Golds,	36	45	16.20			
	36	55	19.80	50*	23.20	
	36	6	21.60	55*	9.72	
						$337.83

Feb. 18th.

Wht. Blk.	2888	5	144.40			
	1546	5 1-2	85.03	30*	160.60	
	50	6 1-2	3.25	32 1-2*	2.20	
	100	7 1-2	7.50	35*	4.88	
	58	6 1-2	3.77	32 1-2*	2.55	
Glimmer,	108	7 1-2	8.10	35*	5.27	
10 oz. Golds,	50	8	4.00			

THE LEWIS VOIGHT & SONS CO.

Benton, Heath & Co.—Cont.

Glimmer,	176	9	15.84	37 1-2*	12.40	
12 oz. Golds,	230	10	23.00			
	470	11	51.70	42 1-2*	42.96	
	400	12 1-2	50.00			
Emb. Golds,	200	12 1-2	25.00	45*	41.25	
Wht. Blk. Bdr.	320	15	48.00	40*	28.80	
10 oz. Golds,	6	39	1.80			
Glimmer,	42	30	12.60			
Wht. Blk. Bdr.	26	30	7.80	45*	12.21	
12 oz. Golds,	154	45	69.30			
Emb. Gd. Bdr.	104	45	46.80	50*	58.05	
						$371.17

Feb. 20th.

Wht. Blk.	2656	5 1-2	146.08	30*	150.64	
	1152	6	69.12	32 1-2*	24.13	
	550	6 1-2	35.75	40*	1.30	
	24	9	2.16	37 1-2*	2.00	
10 oz. Gold,	32	10	3.20	42 1-2*	3.16	
12 oz. Flats,	50	11	5.50	45*	5.78	
12 oz. Golds,	84	12 1-2	10.50			
Ingrain,	20	12 1-2	2.50	40*	7.08	
12 oz. Flats,	62	15	9.30			
Wht. Blk. Bdr.	26	22	5.72			

THIS PAGE BOUND VER

Benton, Heath & Co.—Cont.

	150	25	37.50			
	314	28	87.92			
10 oz. Golds,	12	35	4.20			
12 oz. Flats,	6	35	2.10	45*	75.59	
						$269.68
			Feb. 24th, 1899.			
W. B. Side,	1600					
Ceil.	1144	5 1-2	150.92	30*	105.65	
Bord.	246	15	36.90	40*	22.14	
						$127.79
			Feb. 28th.			
Wht. Blk.	1800	5	90.00	30*	63.00	
12 oz. Flat,	82	10	8.20	37 1-2*	5.13	
Wht. Blk. Bdr.	40	15	6.00	40*	3.60	
	154	18	27.72	45*	15.25	
						$86.98
			March 2nd.			
W. Blk. Side,	354					
Ceil,	486	5	42.00	30*	29.40	
Side,	300					
Ceil.	83	6 1-2	25.22	32 1-2*	17.03	
12 oz. Gold Ceil.	116	10	11.60	42 1-2*	6.67	

THE LEWIS VOIGHT & SONS CO.

Benton, Heath & Co.—Cont.

Emb. Gold Side,	200	12 1-2	25.00	45*	13.75	
W. Blk. Bord.	46	15	6.90	40*	4.14	
Blk. Bord.	18	18	3.24			
Blk. B. Bord.	54	28	15.12	45*	10.10	
Emb. Gold. Bord.	46	45	20.70	50*	10.35	
						$91.44

March 4th.

W. B. Side,	600		44.00			
W. B. Ceil,	200	5 1-2	22.20	30*	46.34	
W. B. Ceil.	370	6	29.25	32 1-2*	19.75	
W. B. Side,	450	6 1-2	10.80	40*	6.48	
W. B. Bord.	72	15	25.08	45*	13.79	
W. B. Bord.	114	22				$86.36

March 8th.

Wht. Blk.	800	5	40.00			
	1400	5 1-2	77.00	30*	81.90	
	1700	6 1-2	110.50	32 1-2*	74.59	
12 oz. Flats,	340	10	34.00	37 1-2*	21.25	
	180	12 1-2	22.50	40*	13.50	
	444	15	66.60			
	12	18	2.16	42 1-2*	39.54	

THIS PAGE BOUND VERT

Benton, Heath & Co.—Cont.

Wht. Blk. Bdr.	144	15	21.60	40*	12.96	
	16	18	2.88			
	116	22	25.22			
	104	28	29.12			
12 oz. Flats,	40	35	14.00	45*	39.34	
	150	40	60.00			
Tap Flat,	10	45	4.50			
	8	55	4.40	50*	34.54	
						$317.53
			March 15th.			
W. B. Ceil.	50	5 1-2	2.75	30*	1.93	
Ceil.	216					
Side.	150	6 1-2	23.79	32 1-2*	16.06	
Side.	200	8	16.00	37 1-2*	10.00	
10 oz. Gold,	300					
Ceil.	168	9	42.12	40*	25.28	
W. Blk. B. Bor.	38	28	10.64			
	54	30	16.20			
10 oz. Go. B. Bor.	74	35	25.90	45*	29.01	
						$82.28
			March 18th.			
Print. Ing.	150	13 1-2	20.25	45*	11.14	
						$11.14

March 24th, 1899.

Glimmer,	52	7 1-2	3.90			
	230	8 1-2	19.55	35*	15.24	
	100	9	9.00			
	250	10	25.00	37 1-2*	21.25	
12 oz. Golds,	386	11	42.46	42 1-2*	24.41	
	100	13 1-2	13.50	45*	7.43	
12 oz. Flats,	50	10	5.00	37 1-2*	3.12	
	76	15	11.40	42 1-2*	6.56	
Glim Bdr.	26	30	7.80			
	92	35	32.20	45*	22.00	
12 oz. Flats,	14	45	6.30			
12 oz. Golds,	66	45	29.70			
Emb. Golds,	68	45	30.60	50*	33.30	$133.31

March 28th.

W. B. Ceil,	68	5 1-2	3.74			
B. Side,	324	6	19.44	30*	16.23	
12 oz. Flat,	50	15	7.50	42 1-2*	4.32	$20.55

March 30th.

Emb. Gold Side,	136	18	24.48	50*	12.24	$12.24

THIS PAGE BOUND VERT

Benton, Heath & Co.—Cont.

April 1st.

12 oz. Fl. C' 1.	8	10	.80	37 1-2*	.50	
12 oz. Side,	16	15	2.40	42 1-2*	1.38	
12 oz. Bord.	4	35	1.40	45*	.77	
						$2.65

April 4th.

W. B. Side,	400					
B. Ceil.	2.50	5	32.50	30*	22.75	
B. Side,	300					
B. Ceil,	200	6 1-2	32.50	32 1-2*	21.94	
12 oz. Flat Side,	50	12 1-2	6.25			
W. Blk. Bord.	60	15	9.00	40*	9.15	
Blk. B. Bord.	80	28	22.40	45*	12.32	
						$66.16

April 10th.

W. Bl. Side,	500					
Bl. Ceil.	3.70	6	52.20	30*	36.54	
Plain Ing.	200	12 1-2	25.00	30*	17.50	
Ing. Ceil. 22,	60	15	9.00	50*	4.50	
W. Bl. Bor.	120	28	33.60	45*	18.48	
						$77.02

April 24th.

Wht. Blk.	3400	5	170.00			

THE LEWIS VOIGHT & SONS CO.

	320	5 1-2	17.60			
	50	6	3.00	30*	133.42	
	150	6 1-2	9.75	32 1-2*	6.58	
	350	7	24.50			
	50	7	3.50	35*	18.20	
10 oz. Golds,	100	10	10.00	37 1-2*	6.25	
Glimmer,	106	15	15.90	40*	9.54	
Wht. Blk. Bdr.	24	18	4.32			
	32	22	7.04			
	24	28	6.72			
	4	20	.80			
10 oz. Golds,	26	35	9.10	45*	15.39	
Glimm. Bdr.						$189.38

April 27th, 1899.

W. Blk. Side,	600					
Blk. Ceil.	350	5	47.50	30*	33.25	$33.25

April 29th.

W. Blk. Ceil.	774	5 1-2	42.57			
Blk. Side,	84	6	5.04	30*	33.33	
Blk. Side,	250					
Blk. Ceil.	150	6 1-2	26.00	32 1-2*	17.55	

THIS PAGE BOUND VER

6—212

Benton, Heath & Co.—Cont.

12 oz. Flat Ceil.	138	10	13.80	37 1-2*	8.63	
10 oz. Gold Ceil.	90	10	9.00			
Gold Side	150	11	16.50	40*	15.30	
12 oz. Gold Ceil.	50	11	5.50	42 1-2*	3.16	
Gold Ceil.	272	12 1-2	34.00			
Gold Side,	132	13 1-2	17.82	45*	28.50	
12 oz. Flat Side,	334	15	50.10	42 1-2*	28.81	
Emb. Gold Flat,	200	18	36.00			
Gold Flat,	100	20	20.00			
12 oz. Gold B. Bor.	6	40	2.40	50*	29.20	
						$164.48

May 1st.

Ing. Ceil. 22 Bor.	212	15	31.80	50*	15.90	
W. Blk. Bord.	14	18	2.52	45*	1.39	
						$17.29

May 4th.

W. Blk. Side,	250					
Ceil.	120	5	18.50	30*		
Side,	650					
Ceil.	430	5 1-2	59.40	30*	54.53	
Side,	184	6 1-2	11.96	32 1-2*	8.07	

THE LEWIS VOIGHT & SONS CO.

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Benton, Heath & Co.—Cont.

Bord.	28	15	4.20	40*	2.52	
W. B. Bord.	154	25	38.50			
W. B. Bord.	36	28	10.08	45*	26.72	$91.84
			May 5th.			
10 oz. Go. Side,	400			35*	28.21	
Ceil.	220	7	43.40	30*	1.93	
W. B. Ceil.	50	5 1-2	2.75	42 1-2*	5.44	
12 oz. Gold Side,	86	11	9.46	35*	3.71	
Glim Ceil.	76	7 1-2	5.70			
Ing. Ceil 22 Side	220	15	33.00	50*	20.50	
12 oz. Gold B. Bor.	20	40	8.00			$59.79
			May 9th.			
Glim Ceil.	140	10	14.00	37 1-2*	8.75	
Glim Side,	212	12 1-2	26.50	40*	17.16	
W. Blk. Bord.	14	15	2.10	50*	10.40	
Glim B. Bord.	52	40	20.80			$36.31
			May 16th.			
12 oz. Gold Ceil.	142	11	15.62	42 1-2*	8.98	

THIS PAGE BOUND VER

Benton, Heath & Co.—Cont.

Ing. Ceil.	258	15	38.70	30*	27.09	
						$36.07
			May 19th.			
W. Blk. Ceil.	312	5 1-2	17.16			
Blk. Side,	272	6	16.32	30*	23.44	
						$23.44
			May 23rd.			
Blk. Ing.	306	12 1-2	38.25	30*	26.78	
						$26.78
			May 29th, 1899.			
12 oz. Gold,	320	13 1-2	43.20	45*	23.76	
E. T. Gold Side,	200	20	40.00	50*	20.00	
						$43.76
			June 9th.			
W. Blk. Side,	150	5 1-2	8.25			
	200	6	12.00	30*	14.18	
	142	6 1-2	9.23	32 1-2*	6.23	
Blk. Bord.	24	15	3.60	40*	2.16	
Blk. B. Bord.	6	18	1.08			
	18	22	3.96			

THE LEWIS VOIGHT & SONS CO.

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Benton, Heath & Co.—Cont.

	93	28	26.04	45*	17.09	$39.66
Total,						$16,996.72

William Campbell & Co.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.
			Oct. 14, 1898.		
Brn.	2000	4	80.00	25*	60.00
Bdr.	250	15	37.50	40*	22.50
Brn. Bdr.	3000	4	120.00	25*	90.00
Brn. Bdr.	350	15	52.50	40*	31.50
	2000	4	80.00	25*	60.00
Brn. Bdr.	250	15	37.50	40*	22.50
	2000	4	80.00	25*	60.00
Brn. Bdr.	250	15	37.50	40*	22.50
	3000	4	120.00	25*	90.00
Brn. Bdr.	350	15	52.50	40*	31.50
	2650	4	106.00	25*	79.50

THIS PAGE BOUND VERTI

William Campbell & Co.—Cont.

Bdr.	320	15	48.00	40*	28.80	
	2000	4	80.00	25*	60.00	
Bdr.	250	15	37.50	40*	22.50	
	2000	4	80.00	25*	60.00	
Bdr.	250	15	37.50	40*	22.50	
	2000	4	80.00	25	60.00	
Bdr.	250	15	37.50	40*	22.50	
						$846.30
			Oct. 26th.			
10 Gilt,	1000	9	90.00	40*	54.00	
Bdr.	150	30	45.00	45*	24.75	
	600	8	48.00	37 1-2*	30.00	
12	450	10	45.00	42 1-2*	25.88	
	150	35	52.50	45*	28.88	
	250	10	25.00	42 1-2*	14.38	
22 Bdr. Emb.	12	25	3.00	50*	1.50	
22" Emb. Bdr.	3	70	2.10	55*	.95	
	12	23	2.76	50*	1.38	
	3	65	1.95	55*	.88	
22" Gilt,	256	18	46.08	50*	23.04	
E. Tap.	460	25	115.00	42 1-2*	66.13	
	150	65	97.50	55*	43.88	
						$315.65

ICAL IN BOOK

William Campbell & Co.—Cont.

Oct. 26th, (Nov. 1.)

Whites,	3000	6 1-2	195.00	32 1-2*	126.75	
Wht. Bdr.	800	23	184.00	45*	101.20	
Whites,	1600	5 1-2	88.00	30*	61.60	
						$289.55

Nov. 10th.

White,	200	6 1-2	13.00	32 1-2*	8.78	
	48	23	11.04	45*	6.07	
	120	5 1-2	6.60	30*	4.62	
						$19.47

Nov. 14th.

Whites,	648	6	38.88	30*	27.22	
Wht. Bdr.	74	18	13.32	45*	7.33	
Browns,	2000	4	80.00	25*	60.00	
Brown Bdr.	250	15	37.50	40*	22.50	
Browns,	5000	4	200.00	25*	150.00	
Brown Bdr.	500	15	75.00	40*	45.00	
						$312.05

Nov. 12, 1898.

Wht.	1538	6	92.28	30*	64.60	

THIS PAGE BOUND VE

William Campbell & Co.—Cont.

W. Bdr.	376	28	105.28	45*	57.91
	758	5 1-2	41.69	30*	29.18
	33	28	9.24	45*	5.08
	2400	5 1-2	132.00	30*	92.40
	350	15	52.50	40*	31.50
	1350	5 1-2	74.25	30*	51.98
	2400	5 1-2	132.00	30*	92.40
	350	15	52.50	40*	31.50
	1350	5 1-2	74.25	30*	51.98
	4000	4 1-2	180.00	27 1-2*	130.50
	550	15	82.50	40*	49.50
	2100	4 1-2	94.50	27 1-2*	68.51
	100	5 1-2	5.50	30*	3.85
	14	15	2.10	40*	1.26
	66	5	3.30	30*	2.31
	1400	5 1-2	77.00	30*	53.90
	180	18	32.40	45*	17.82
	800	5 1-2	44.00	30*	30.80
	250	6 1-2	16.25	32 1-2*	10.97
	30	18	5.40	45*	2.97
	100	5 1-2	5.50	30*	3.85
	100	5	5.00	30**	3.50
	12	15	1.80	40*	1.08
	100	5 1-2	5.50	30*	3.85

William Campbell & Co.—Cont.

	12	15	1.80	40*	1.08
	50	5 1-2	2.75	30*	1.93
	200	5 1-2	11.00	30*	7.70
	24	15	3.60	40*	2.16
	100	5 1-2	5.50	30*	3.85
	1700	6	102.00	30*	71.40
	250	18	45.00	45*	24.75
	1000	5 1-2	55.00	30*	38.50
	2000	7	140.00	35*	91.00
	300	18	54.00	45*	29.70
	1200	5 1-2	66.00	30*	46.20
	700	7	49.00	35*	31.85
	80	18	14.40	45*	7.92
	350	5 1-2	19.25	30*	13.48
	100	6	6.00	30*	4.20
	12	18	2.16	45*	1.19
	100	5 1-2	5.50	30*	3.85
White,	2400	5 1-2	132.00	30*	92.40
Bdr.	350	15	52.50	40*	31.50
	1350	5 1-2	74.25	30*	51.98
	4000	4 1-2	180.00	27 1-2*	130.50
	550	18	99.00	45*	54.45
	2100	4 1-2	94.50	27 1-2*	68.52
Brn.	3000	4	120.00	25*	90.00

THIS PAGE BOUND VERT

William Campbell & Co.—Cont.

	350	15	52.50	40*	31.50	
						$1824.81

Nov. 17th, 1898.

White,	1000	6 1-2	65.00	32 1-2*	43.88	
White Bdr.	120	18	21.60	45*	11.88	
	400	5 1-2	22.00	30*	15.40	
22" Emb.	600	23	138.00	45*	75.90	
22" Bdr.	200	65	130.00	55*	58.50	
22" Gilt,	350	18	63.00	50*	31.50	
22" Emb.	450	25	112.50	45*	61.88	
22" Emb. Bdr.	150	70	105.00	55*	47.25	
22" Gilt,	250	18	45.00	50*	22.50	
						368.69

Nov. 22nd.

White,	[illegible]	5 1-2	11.00	30*	7.70	
Bdr.	50	25	12.50	45*	6.88	
White,	126	5 1-2	6.93	30*	4.85	
White,	50	5 1-2	2.75	30*	1.93	
Bdr.	6	20	1.20	45*	.66	
White,	250	5 1-2	13.75	30*	9.63	
Bdr.	36	20	7.20	45*	3.96	
White,	126	5 1-2	6.93	30*	4.85	

THE LEWIS VOIGHT & SONS CO.

TICAL IN BOOK

William Campbell & Co.—Cont.

White,	120	6 1-2	7.80	32 1-2*	5.27
Bdr.	30	28	8.40	45*	4.62
White,	50	5 1-2	2.75	30*	1.93
White,	420	6	25.20	30*	17.64
Bdr.	104	23	23.92	45*	13.16
White,	250	6	15.00	30*	10.50
White,	700	5 1-2	38.50	30*	26.95
Bdr.	174	25	43.50	45*	23.93
White,	350	5 1-2	19.25	30*	13.48
White,	250	5 1-2	13.75	30*	9.63
Bdr.	60	25	15.00	45*	8.25
White,	136	5 1-2	7.48	30*	5.24
White,	150	6	9.00	30*	6.30
Bdr.	18	22	3.96	45*	2.18
White,	80	5 1-2	4.40	30*	3.08
White,	200	6	12.00	30*	8.40
Bdr.	50	23	11.50	45*	6.33
White,	100	6	6.00	30*	4.20
White,	150	6 1-2	9.75	32 1-2*	6.58
Bdr.	36	28	10.08	45*	5.54
White,	120	5 1-2	6.60	30*	4.62
White,	150	5	7.50	30*	5.25
	30	5	1.50	30*	1.05
Brown,	2000	4	80.00	25*	60.00

THIS PAGE BOUND VERTICALLY

RTICAL IN BOOK

William Campbell & Co.—Cont.

Bdr.	200	15	30.00	40*	18.00	
Brown,	3000	4	120.00	25*	90.00	
Bdr.	300	15	45.00	40*	27.00	
Tint,	100	10	10.00	35*	6.50	
	50	10	5.00	35*	3.25	
	50	15	7.50	35*	4.88	
	50	10	5.00	35*	3.25	
10 oz. Gilt,	50	7	3.50	35*	2.28	
10 oz. Gt. Bdr.	14	25	3.50	45*	1.93	
10 oz. Gt.	32	7	2.24	35*	1.46	
						$453.14

Nov. 22, 1898.

12 oz. Gilt,	60	13 1-2	6.75	45*	3.71	
12 oz. Gilt Bdr.	12	45	5.40	50*	2.70	
12 oz. Gilt,	22	11	2.42	42 1-2*	1.39	
12 oz. Gilt,	26	10	2.60	42 1-2*	1.50	
12 oz. Gilt Bdr.	6	40	2.40	50*	1.20	
12 oz. Gilt,	16	10	1.60	42 1-2*	.92	
Silk Emb.	24	20	4.80	42 1-2*	2.76	
Silk Emb. Bdr.	6	55	3.30	50*	1.65	
Silk Emb.	16	20	3.20	42 1-2*	1.84	
Ind. Gt. Bdr.	32	25	8.00	45*	4.40	
	80	20	16.00	45*	8.80	

William Campbell & Co.—Cont.

Emb. Tap. Bdr.	34	65	22.10	55*	9.95	
Tap Flat,	50	18	9.00	42 1-2*	5.18	
Ing. Bdr.	24	55	13.20	50*	6.60	
Ing. Ceil.	74	15	11.10	50*	5.55	
						$58.15

Nov. 26th.

Brown,	3000	4	120.00	25*	90.00	
Bdr.	350	15	52.50	40*	31.50	
Brown,	2000	4	80.00	25*	60.00	
Bdr.	250	15	37.50	40*	22.50	
White,	100	5	5.00	30*	3.50	
Bdr.	12	15	1.80	40*	1.08	
White	450	6 1-2	29.25	32 1-2*	19.75	
Bdr.	86	28	24.08	45*	13.25	
White,	200	5 1-2	11.00	30*	7.70	
Bdr.	34	28	9.52	45*	5.24	
White,	422	5 1-2	23.21	30*	16.26	
Bdr.	100	25	25.00	45*	13.75	
10 oz. Glim,	50	10	5.00	37 1-2*	3.13	
10 oz. Bdr.	12	30	3.60	45*	1.98	
10 oz.	30	7 1-2	2.25	35*	1.47	
12 oz. Gilt,	500	13 1-2	67.50	45*	37.13	
12 oz.	120	45	54.00	50*	27.00	

THIS PAGE BOUND VER

William Campbell & Co.—Cont.

12 oz.	300	11	33.00	42 1-2*	18.98	
12 oz.	50	13 1-2	6.75	45*	3.72	
12 oz. Gilt,	12	45	5.40	50*	2.70	
12 oz.	32	11	3.52	42 1-2*	2.03	
22 oz. Gilt,	80	20	16.00	50*	8.00	
22 Gilt Bdr.	20	60	12.00	55*	5.40	
22"	118	18	21.24	50*	10.62	
22" Emb.	100	23	23.00	50*	11.50	
22" Gilt,	24	65	15.60	55*	7.02	
20" Emb.	650	15	97.50	50*	48.75	
20" Emb. Gilt,	200	45	90.00	50*	45.00	
20" Emb.	350	15	52.50	50*	26.25	
Emb. Tap.	350	20	70.00	42 1-2*	40.25	
Emb. Tap.	150	55	82.50	50*	41.25	
Flat,	200	12 1-2	25.00	40*	15.00	
						$641.71

Dec. 1, 1898.

Wht. Bdr.	50	18	9.00	45*	4.95	
	50	6	3.00	30*	2.10	
	6	18	1.08	45*	.60	
	28	5 1-2	1.54	30*	1.08	
	36	18	6.48	45*	3.57	
	52	5 1-2	2.86	30*	2.01	

William Campbell & Co.—Cont.

	12	25	3.00	45*	1.65
	24	5 1-2	1.32	30*	.93
	450	6 1-2	29.25	32 1-2*	19.75
	98	28	27.44	45*	15.09
	272	5 1-2	14.96	30*	10.48
	50	6	3.00	30*	2.10
	12	23	2.76	45*	1.52
	32	6	1.92	30*	1.35
	22	40	8.80	50*	4.40
	30	15	4.50	40*	2.70
12 Gilt,	50	10	5.00	42 1-2*	2.88
	12	40	4.80	50*	2.40
	130	10	13.00	42 1-2*	7.48
	26	40	10.40	50*	5.20
	64	10	6.40	42 1-2*	3.68
	50	7	3.50	35*	2.28
	14	25	3.50	45*	1.93
	36	7	2.52	35*	1.64
Ing. Color Bdr.	20	20	4.00	45*	2.20
22 oz. Gilt,	82	20	16.40	50*	8.20
	22	60	13.20	55*	5.94
	48	18	8.64	50*	4.32
20 oz. E. Gold,	300	16	48.00		
Bdr.	76	50	38.00	50*	43.00

THIS PAGE BOUND VERT

William Campbell & Co.—Cont.

12 oz. Gilt,	200	11	22.00	42 1-2*	12.65	
20 oz. Emb. Gold,	1250	16	200.00			
Bdr.	350	50	175.00	50*	187.50	
12 oz. Gilt,	650	11	71.50	42 1-2*	41.12	
Ing. Hang.	300	12 1-2	37.50	30*	26.25	
I. Bdr.	24	50	12.00			
Ceil. Ing.	80	15	12.00	50*	12.00	
Ing. Hang.	300	12 1-2	37.50	30	26.25	
						$471.20

Dec. 8, 1898.

10 oz. Gilt,	50	11	5.50	40*	3.30	
Bdr.	14	40	5.60	50*	2.80	
	80	11	8.80	40*	5.28	
Bdr.	14	40	5.60	50*	2.80	
	48	11	5.28	40*	3.17	
Bdr.	4	40	1.60	50*	.80	
	6	10	.60			
10 oz. Glim,	600	12 1-2	75.00	40*	45.36	
Bdr.	150	40	60.00	50*	30.00	
	300	9	27.00	37 1-2*	16.88	
Ing. Ceil.	142	15	21.30	50*	10.65	
Ing. Hang,	800	20	160.00	30*	112.00	
Ing. Bdr.	225	60	135.00	55*	60.75	

William Campbell & Co.—Cont.

Ing. Ceil.	306	15	45.90	50*	22.95	
Ing. Hang,	1400	12 1-2	175.00	30	122.50	
12 oz. Glim,	100	9	9.00	37 1-2*	5.63	
20 oz. Emb. Gold,	24	16	3.84			
Brdr.	6	50	3.00	50*	3.42	
20 oz. Emb. G. Br.	8	50	1.76	42 1-2*	1.02	
12 oz. Gilt,	16	11	4.00			
20 oz. Emb. Gold,	26	15	3.90	50*	3.95	
12 oz. Gilt,	14	10	1.40	42 1-2*	.81	
White,	2400	5	120.00	30*	84.00	
Bdr.	350	15	52.50	40*	31.50	
	1350	5	67.50	30*	47.25	
	3000	6 1-2	195.00	32 1-2	131.63	
Bdr.	750	28	210.00	45*	115.50	
	2000	6	120.00	30*	84.00	
Browns,	3000	4	120.00	25*	90.00	
Bdr.	300	15	45.00	40*	27.00	
	1350	4	54.00	25*	40.50	
Bdr.	180	15	27.00	40*	16.20	
	3000	4	120.00	25*	90.00	
Bdr.	350	15	52.50	40*	31.50	
White,	550	6 1-2	35.75	32 1-2*	24.14	
Bdr.	130	28	36.40	45*	20.12	
						$1,287.31

THIS PAGE BOUND VER

TICAL IN BOOK

L—212

William Campbell & Co.—Cont.

Dec. 12th.

Brown,	2000	4	80.00	25*	60.00	
Bdr.	200	15	30.00	40*	18.00	
	2000	4	80.00	25*	60.00	
Bdr.	200	15	30.00	40*	18.00	
	3000	4	120.00	25*	90.00	
Bdr.	300	15	45.00	35*	29.25	
White,	50	10	5.00	40*	3.00	
Bdr.	12	30	3.60	45*	1.98	
	26	7 1-2	1.95	35*	1.27	
	2000	6 1-2	130.00	32 1-2*	87.75	
Bdr.	500	28	140.00	45*	77.00	
	1300	5 1-2	71.50	30*	50.05	
Bdr.	26	28	7.28	45*	4.00	
	300	5 1-2	16.50	30*	11.55	
Bdr.	74	25	18.50	45*	10.17	
						$522.02

Dec. 12th.

White Bdr.	150	5 1-2	8.25			
	1500	6	90.00	30*	68.78	
Bdr.	400	28	112.00	45*	61.60	
	850	5 1-2	46.75	30*	32.73	

THE LEWIS VOIGHT & SONS CO.

12 oz. Gilt,	550	18	99.00			
12 oz. Gilt,	176	50	88.00			
	350	15	52.50			
20 oz. Emb. Gold,	50	16	8.00			
Bdr.	8	45	3.60			
	26	15	3.90	50*	127.50	
White Bdr.	800	15	120.00	40*	72.00	
						$362.61
			Dec. 12th.			
White Bdr.	16	15	2.40	35	1.56	
						$1.56
			Dec. 13th.			
Wht.	2000	7	140.00	35*	91.00	
Bdr.	500	28	140.00	45*	77.00	
	1500	5 1-2	82.50	30*	57.75	
	500	7	35.00	35*	22.75	
	140	28	39.20	45*	21.56	
	1700	6	102.00	30*	71.40	
	400	28	112.00	45*	61.60	
	1200	5 1-2	66.00			
	450	6	27.00	30*	65.10	
	132	28	36.96	45*	20.33	

THIS PAGE BOUND VER

William Campbell & Co.—Cont.

	600	6 1-2	39.00	32 1-2*	26.34	
	150	28	42.00	45*	23.10	
	300	6	18.00			
	600	5	30.00	30*	33.60	
	76	15	11.40	40*	6.84	
	200	5	10.00	30*	7.00	
Brn.	2000	4	80.00	25*	60.00	
	250	15	37.50	40*	22.50	
	4500	4	180.00	25*	135.00	
	500	15	75.00	40*	45.00	
Wht.	50	6	3.00	30*	2.10	
Exclusive,	100	75	75.00			
Bdr.	30	1.50	45.00			
	60	25	15.00	25*	101.25	
						$951.22
			Dec. 17th.			
10 oz. Gilts,	100	8	8.00	37 1-2*	5.00	
10 oz. Gilt Bdr.	50	25	12.50	45*	6.88	
Whites,	100	6	6.00	30*	4.20	
White Bdr.	50	18	9.00	45*	4.95	
						$21.03
			Dec. 16th, 1898.			
White,	100	5 1-2	5.50	30*	3.85	

THE LEWIS VOIGHT & SONS CO.

William Campbell & Co.—Cont.

White Bdr.	24	25	6.00	45*	3.30
White,	50	5 1-2	2.75		
	100	5 1-2	5.50	30*	5.78
Bdr.	12	25	3.00	50*	1.50
	100	10	10.00	40*	6.00
Bdr.	20	30	6.00	45*	3.30
	50	7 1-2	3.75	35*	2.44
	542	6	32.52	30*	22.77
Bdr.	154	28	43.12	45*	23.72
	422	5 1-2	23.21	30*	16.25
	2100	7	147.00	35*	95.55
Bdr.	550	28	154.00	45*	84.70
	1050	5 1-2	57.75	30*	40.43
	400	6	24.00	30*	16.80
Bdr.	50	18	9.00	45*	4.95
	100	6	6.00	30*	4.20
	600	7	42.00	35*	27.30
Bdr.	150	28	42.00	45*	23.10
	350	5 1-2	19.25	30*	13.48
10 oz. Gilt,	50	10	5.00	40*	3.00
10 oz. Gt. Bdr.	12	40	4.80	50*	2.40
	30	8	2.40	37 1-2*	1.50
	200	7	14.00	35*	9.10
Bdr.	50	25	12.50	45*	6.88

THIS PAGE BOUND VERT

William Campbell & Co.—Cont.

	120	7	8.40	35*	5.46	
	1000	8	80.00	37 1-2*	50.00	
Bdr.	150	25	37.50	45*	20.63	
	600	8	48.00	37 1-2*	30.00	
20 oz. Emb. Gt.	200	15	30.00			
20 oz. Emb. Bdr.	118	45	53.10			
20 oz. Gt.	120	15	18.00	50*	50.55	
Ing. Bdr.	18	60	10.80	55*	4.86	
Ing. Ceil,	50	15	7.50	50*	3.75	
Ing. Hang,	168	30	59.40	30	35.28	
Ing. Bdr.	66	55	36.30			
Ing. Ceil,	208	15	31.20	50*	33.75	
						$656.58

Dec. 20th, 1898.

Whites,	2500	6 1-2	162.50	32 1-2*	109.69	
	1550	5 1-2	85.25			
	2000	6	120.00	30*	143.68	
Whites Bdr.	1126	28	315.28	45*	173.41	
	28	15	4.20	40*	2.52	
Whites,	1336	12 1-2	167.00	45*	91.85	
Whites, Bdr.	350	40	140.00	50*	70.00	
Whites,	2000	7	140.00	35*	91.00	
Browns,	10000	4	400.00	25*	300.00	

TICAL IN BOOK

William Campbell & Co.—Cont.

Bro. Bdr.	1050	15	157.50	40*	94.50	
20 oz. Emb. Gt.	1300	18	234.00	50*	117.00	
Emb. Bdr.	376	55	206.80	50*	103.40	
12 oz. Gilt,	700	12 1-2	87.50			
20 oz. Emb. Gt.	50	20	10.00	45*	53.63	
20 oz. Bdr.	14	60	8.40	55*	3.78	
12 oz. Gilt,	26	12 1-2	3.25	45*	1.79	
Ing. Hang,	60	25	15.00	30	10.50	
Ing. Bdr.	24	55	13.20			
Ing. Ceil	74	15	11.10	50*	12.15	
						$1378.90

Dec. 21st.

Whites,	50	6 1-2	3.25	32 1-2*	2.20	
Whites, Bdr.	50	23	11.50	45*	6.33	
Whites,	50	6	3.00	30*	2.10	
						$10.63

Dec. 24th.

Whites,	4910	6	294.60	30*	206.22	
Whites Bdr.	52	28	14.56			
	980	23	225.40			
	250	18	45.00	45*	156.73	
Whites,	3700	6 1-2	240.50	32 1-2*	162.34	

THIS PAGE BOUND VERT

William Campbell & Co.—Cont.

Browns,	18712	4	748.48	25*	561.36	
Browns Bdr.	2134	15	320.10	40*	192.06	
Emb. Tap	74	18	13.32	42 1-2*	7.66	
Emb. Tap	18	55	9.90	50*	4.95	
Emb. Tap	50	15	7.50	40*	4.50	
Emb. Tap Bdr.	6	50	3.00	50*	1.50	
Flat,	46	12 1-2	5.75	40*	3.45	
Satin,	438	20	87.60	42 1-2*	50.37	
Satin Bdr.	152	55	83.60	50*	41.80	
Satin,	250	18	45.00	42 1-2*	25.88	
Ing. Hang.	1550	12 1-2	193.75	30	135.63	
Ing. Bdr.	458	55	251.90			
Ing. Ceil,	738	15	110.70	50*	181.30	
Dam Stripe,	180	18	32.40	42 1-2*	18.63	
						$1754.38

Dec. 30th.

White.	230	5	11.50	30*	8.05	
White Bdr.	26	15	3.90	40*	2.34	
Brown,	10500	4	420.00	25*	315.00	
Brown Bdr.	1150	15	172.50	40*	103.50	
22 oz. Emb. Gt.	44	25	11.00	50*	5.50	
22 oz. Emb. Bdr.	10	70	7.00	55*	3.15	
22 oz. Gilt,	24	15	3.60	50*	1.80	

William Campbell & Co.—Cont.

12 oz Gilt,	26	13 1-2	3.51	45*	1.94	
12 oz. Gt. Bdr.	8	40	3.20	50*	1.60	
12 oz. Gt.	20	11	2.20	42 1-2*	1.27	
Emb. Tap.	32	15	4.80	40*	2.88	
Em. Tap Bdr.	8	50	4.00	50*	2.00	
Flat,	22	12 1-2	2.75	40*	1.65	
Ing. Hang.	1000	12 1-2	125.00	30	87.50	
Ing. Bdr.	800	50	400.00	50*	200.00	
Ing. Hang.	62	30	18.60	30	13.02	
Ing. Bdr.	28	55	15.40	50*	7.70	
Ing. Hang.	62	25	15.50	30	10.85	
Ing. Ceil,	1562	15	234.30	50*	117.50	
						$886.90

Jan. 3, 1899.

Tile,	546	20	109.20	30	76.44	
Bdr.	20	50	10.00	50*	5.00	
Wht.	500	7 1-2	37.50	35*	24.38	
	300	6 1-2	19.50	32 1-2*	13.16	
Wht. Bdr.	126	25	31.50	45*	17.32	
Ing. Bdr.	644	55	354.20	50*	177.10	
Ing. Ceil.	830	15	124.00	50*	62.25	
Ing. Bdr.	68	55	37.40	50*	18.70	
10 Gilt	400	8	32.00	37 1-2*	20.00	

THIS PAGE BOUND VER

William Campbell & Co.—Cont.

	100	35	35.00	45*	19.25	
	476	7	33.32	35*	21.66	
Gt. Bdr.	38	25	9.50	45*	5.23	
	650	7	45.50	35*	29.57	
10 Gilt Bdr.	100	25	25.00	45*	13.75	
Brn	3000	4	120.00	25*	90.00	
Brn Bdr.	360	15	54.00	40*	32.40	
						$626.21

Jan. 9th (Jan. 10).

Var Tile,	20	50	10.00	50*	5.00	
	100	20	20.00	30	14.00	
Ing. Bdr.	452	55	248.60	50*	124.30	
Ing. Ceil,	766	15	114.90	50*	57.45	
Ing. Hang	2750	12 1-2	343.75	30	240.63	
Wht.	1200	7	84.00	35*	54.60	
Wht. Bdr.	290	28	81.20	45*	44.66	
	900	6	54.00	30*	37.80	
	220	22	48.40	45*	26.62	
	1800	6	108.00			
	1000	5 1-2	55.00	30*	114.10	
Brn.	18200	4	728.00	25*	546.00	
Brn Bdr.	940	15	141.00	40*	84.60	
						$1349.76

THE LEWIS VOIGHT & SONS CO.

TICAL IN BOOK

William Campbell & Co.—Cont.

Jan. 9th (10th).

Brn Bdr.	11186	15	177.90	40*	106.74	
12 oz. Gilt,	10	11	1.10	42 1-2*	.64	
Bdr.	4	40	1.60	50*	.80	
	6	10	.60	42 1-2*	.35	
20 oz. E Gold,	20	16	3.20			
Bdr	4	45	1.80	50*	2.50	
						$111.03

Jan. 16th.

Whites,	1718	5	85.90	30*	60.13	
	1200	6 1-2	78.00	32 1-2*	52.65	
	720	5 1-2	39.60	30*	27.72	
Wht. Bdr.	150	18	27.00			
	274	28	76.72	45*	57.05	
Var Tiles,	100	20	20.00	30	14.00	
20 oz. Emb. Gt.	350	16	56.00			
20 oz. Emb. Gt.	200	15	58.50			
20 oz. Emb. Gt.	200	15	30.00	50*	72.25	
Emb. Satin	180	20	36.00	42 1-2*	20.76	
Brown,	4000	4	160.00	25*	120.00	
Brown Bdr.	450	15	67.50	40*	40.50	
						$465.00

THIS PAGE BOUND VERTI

ICAL IN BOOK

William Campbell & Co.—Cont.

Jan. 18th.

Whites,	3250	5 1-2	178.75	30*	125.13	
Wht. Bdr.	520	25	130.00	45*	71.50	
Wht.	600	7	42.00	35*	27.30	
Wht. Bdr.	144	28	40.32	45*	22.18	
Emb. Satin,	180	20	36.00	42 1-2*	20.70	
12 oz. Gilt,	82	10	8.20	42 1-2*	4.72	
12 oz. Bdr.	16	40	6.40	50*	3.20	
10 oz. Bdr.	14	25	3.50	45*	1.93	
Brown,	5950	4	238.00	25*	178.50	
Brown Bdr.	764	15	114.60	40*	68.76	
						$523.92

Jan. 24th (23rd).

22 oz. Gold,	250	23	57.50	50*	28.75	
Bdr.	40	65	26.00	55*	11.70	
	250	25	62.50	50*	31.25	
22 oz. Emb. Gold Bd.	106	70	74.20	55*	33.39	
22 oz. Gilt,	280	18	50.40	50*	25.20	
12 oz. Gilt,	1298	11	142.78	42 1-2*	82.10	
Bdr.	350	40	140.00	50*	70.00	
	642	10	64.20	42 1-2*	36.92	
						$319.31

William Campbell & Co.—Cont.

Jan. 26th.

20 oz. Emb. Gold,	44	15	6.60			
Bdr.	12	50	6.00	50*	6.30	
12 oz. Gold,	20	10	2.00	42 1-2	1.15	
20 oz. Emb. Gold,	4	13 1-2	.54	45*	.30	
Bdr.	1	45	.45	50*	.23	
12 oz. Gilt,	2	11	.22	42 1-2*	.13	
Brown,	4800	4	192.00	25*	144.00	
Brn. Bdr.	610	15	91.50	40*	54.90	
White,	3200	5 1-2	176.00	30*	123.20	
Wht. Bdr.	450	25	112.50	45*	61.88	
	628	6	37.68	30*	26.38	
	24	6 1-2	1.56	32 1-2*	1.06	
						$419.53

Jan. 26th, 1899.

Wht. Bdr.	28	28	7.84			
	66	23	15.18	45*	12.66	
Exclusive,	150	75	112.50			
Bdr.	70	1.50	105.00			
Exc.	140	25	35.00	25*	189.38	
Emb. Tap.	10	18	1.80	42 1-2*	1.04	
20 oz. E. Gold,	14	55	7.70	50*	3.85	

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TICAL IN BOOK

William Campbell & Co.—Cont.

12 oz. Gilt,	50	12 1-2	6.25	45*	3.44	
Ing. Hang,	74	30	22.20	30	15.54	
Ing. Bdr.	30	55	16.50	50*	8.25	
Ing. Ceil.	82	15	12.30	50*	6.15	
Ing. Hang.	24	25	6.00			
Var. Tile,	100	20	20.00	30	18.20	
Ing. Ceil.	50	15	7.50	50*	3.75	
						$262.26
			Jan. 30th.			
12 oz. Gilt,	82	13 1-2	11.07	45*	6.09	
Bdr.	20	45	9.00	50*	4.50	
	54	11	5.94	42 1-2*	3.42	
Ing. Ceil.	1000	15	150.00	50*	75.00	
Ing. Hang.	1400	12 1-2	175.00	30*	122.50	
Bdr. Ing.	450	60	270.00	55*	121.50	
20 oz. Emb. Gold,	14	16	2.24			
E. G. Bdr.	3	45	1.35			
20 oz. E. Gold,	6	15	.90	50*	2.25	
						$335.26
			Feb. 8th.			
20 oz. Emb. Gt.	300	16	48.00			
20 oz. Emb. Bdr.	136	50	68.00	50*	58.00	

William Campbell & Co.—Cont.

20 oz. Emb. Gt.	300	11	33.00	42 1-2*	18.98
White,	2328	5 1-2	128.04	30*	89.63
White Bdr.	1084	28	303.52		
	24	25	6.00		
	62	25	15.50	45*	178.77
	80	20	16.00		
	204	25	51.00	45*	36.85
White,	3900	7	273.00	35*	177.45
	2562	6	153.72		
	86	5	4.30	30*	110.62
	224	6 1-2	14.56	32 1-2*	9.83
White Bdr.	20	22	4.40		
	6	18	1.08	45*	3.02
	18	15	2.70	40*	1.62
Brown,	7700	4	308.00	25*	231.00
Bro. Bdr.	924	15	138.60	40*	83.16
20 oz. Emb. Gt.	26	12 1-2	3.25	45*	1.79
20 oz. Emb. Bdr.	8	45	3.60	50*	1.80
12 oz. Gilt,	22	10	2.20	42 1-2*	1.27
20 oz. Emb. Gt.	50	12 1-2	6.25	45*	3.44
20 oz. Emb. Bdr.	14	45	6.30	50*	3.15
12 oz. Gilt,	26	10	2.60	42 1-2*	1.50
	300	9	27.00	40*	16.20
12 oz. Gt. Bdr.	36	30	10.80	45*	5.94

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William Campbell & Co.—Cont.

12 oz. Gt.	100	8	8.00	37 1-2*	5.00	
						$1039.02
			Feb. 8, 1899.			
12 oz. Flat,	850	12 1-2	106.25	40*	63.75	
12 oz. Bdr.	150	30	45.00	45*	24.75	
12 oz. Bdr.	550	10	55.00	37 1-2*	34.38	
10 oz. Gilt,	60	30	18.00	45*	9.90	
Var. Tile,	300	20	60.00			
	50	20	10.00	30*	49.00	
						$181.78
			Feb. 15th (16th).			
White,	2000	7	140.00	35*	91.00	
	1250	6	75.00	30*	52.50	
Wht. Bord.	552	28	154.56	45*	85.01	
	300	6 1-2	19.50	32 1-2*	13.17	
	200	5 1-2	11.00	30*	7.70	
Brown,	3000	4	120.00	25*	90.00	
Brn. Bdr.	414	15	62.10	40*	37.26	
						$376.64
			Feb. 17th.			
Brown Bdr.	150	15	22.50	40*	13.50	
						$13.50

TICAL IN BOOK

William Campbell & Co.—Cont.

Feb. 18th.

Browns,	7000	4	280.00	25*	210.00	
Browns Bdr.	900	15	135.00	40*	81.00	
White,	600	5	30.00	30*	21.00	
						$312.00

Feb. 20th.

12 oz. Gilt,	400	13 1-2	54.00	45*	29.70	
12 oz. Bdr.	100	45	45.00	50*	22.50	
12 oz. Gold,	552	11	60.72	42 1-2*	34.92	
20 oz. Emb. Gold,	174	16	27.84	50*	13.92	
Emb. Bdr.	46	50	23.00	50*	11.50	
Emb. Tap,	450	30	135.00	42 1-2*	77.63	
	150	75	112.00	55*	50.63	
Gold Tap,	250	18	45.00			
Emb. Tap,	250	25	62.50	42 1-2*	61.82	
Emb. Tap Bdr.	60	65	39.00	55*	17.55	
Gold Tap,	190	18	34.20	50*	17.10	
Brown,	5600	4	224.00	25*	168.00	
Brn. Bdr.	620	15	93.00	40*	55.80	
Wht. Bdr.	18	18	3.24	45*	1.78	
	250	5 1-2	13.75			
	1150	5	57.50	30*	49.88	

THIS PAGE BOUND VER

William Campbell & Co.—Cont.

Brn. Bdr.	34	15	5.10	40*	3.06	
Wht.	12	40	4.80	50*	2.40	
	60	6	3.60	30*	2.52	
22 oz. Em. Gold,	80	22	17.60	50*	8.80	
22 oz. E. G. Bdr.	18	60	10.80	55*	4.86	
	40	18	7.20	50*	3.60	
Var Tile,	450	20	90.00	30	63.00	
						$700.97

Feb. 27th, 1899.

Brown,	700	4	28.00	25*	21.00	
Brn. Bdr.	96	15	14.40	40*	8.64	
White,	250	6 1-2	16.25	32 1-2*	10.97	
	848	5 1-2	46.64	30*	32.65	
	370	6	22.20	30*	15.54	
	200	12 1-2	25.00	40*	15.00	
	66	28	18.48	45*	10.16	
	50	40	20.00	50*	10.00	
	48	25	12.00			
	24	22	5.28			
	6	18	1.08	45*	10.10	
In. Bdr.	26	55	14.30			
In. Ceil.	50	15	7.50	50*	10.90	
						$144.96

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THE LEWIS VOIGHT & SONS CO.

ICAL IN BOOK

William Campbell & Co.—Cont.

March 1st.

Browns,	7600	4	304.00	25*	228.00	
Browns Bdr.	842	15	126.30	40*	75.78	
	2500	4	100.00	25*	75.00	
	250	15	37.50			
12 oz. Flat,	42	12 1-2	5.25	40*	25.65	
12 oz. Flat Bdr.	6	35	2.10	45*	1.16	
12 oz. Gilt,	100	18	18.00			
12 oz. Bdr.	26	50	13.00			
12 oz. Bdr.	60	15	9.00	50*	20.00	
Tap Flat,	32	20	6.40			
Emb.Tap,	52	35	18.20	42 1-2*	14.15	
Emb. Tap Bdr.	12	90	10.80	55*	4.86	
Emb. Satin,	76	20	15.20			
	50	18	9.00	42 1-2*	13.92	
Dam. Stripe,	26	18	4.68	42 1-2*	2.70	
22 oz. Gilt,	26	20	5.20	50*	2.60	
22 oz. Gilt Bdr.	6	60	3.60	55*	1.62	
22 oz. Bdr.	16	18	2.88	50*	1.44	
20 oz. Emb. Gt.	50	13 1-2	6.75	45*	3.72	
20 oz. Emb. Gt. Brd.	14	45	6.30	50*	3.15	
12 oz. Gilt,	34	10	3.40	42 1-2*	1.96	
Tiles,	100	20	20.00	30	14.00	
						$489.71

THIS PAGE BOUND VERT

William Campbell & Co.—Cont.

March 4th.

Ing. Bdr.	2	50	1.00			
Ing. Ceil.	4	15	.60	50*	.80	
						$.80

March 6th, 1899.

Ind. Gilt,	260	20	52.00			
	168	25	42.00	45*	51.70	
Brown,	500	4	20.00	25*	15.00	
Brn. Bdr.	72	15	10.80	40*	6.48	
Wht.	2150	5 1-2	118.25	30*	82.78	
	168	15	25.20	40*	15.12	
12 oz. Gilt,	26	11	2.86	42 1-2*	1.65	
	4	40	1.60	50*	.80	
	14	10	1.40	42 1-2*	.81	
20 oz. Emb. Gold,	92	16	14.72			
20 oz. E. G. Bdr.	23	45	10.35			
20 oz. Emb. Gold,	56	15	8.40	50*	16.74	
						$191.08

March 8th

Brown,	7400	4	296.00	25*	222.00	
Brown Bdr.	830	15	124.50	40*	74.70	
						$296.70

ICAL IN BOOK

William Campbell & Co.—Cont.

March 9th.

10 oz. Gilt,	82	10	8.20	40*	4.92	
10 oz. Bdr.	22	40	8.80	50*	4.40	
10 oz. Bdr.	52	8	4.16	37 1-2*	2.60	
	242	8	19.36	37 1-2*	12.10	
10 oz. Bdr.	40	35	14.00	45*	7.79	
White,	650	6	39.00	30*	27.30	
White Bdr.	50	22	11.00			
	24	22	5.28	45*	8.96	
	400	5 1-2	22.00	30*	15.40	
						$83.38

March 10th.

White,	1200	5 1-2	66.00	30*	46.20	
Wht. Bdr.	90	15	13.50	40*	8.10	
Brown,	1600	4	64.00	25*	48.00	
Brown Bdr.	70	15	10.50	40*	6.30	
Brown Bdr.	100	15	15.00	40*	9.00	
						$117.60

March 11th.

Brown,	4800	4	192.00	25*	144.00	
Brown Bdr.	620	15	93.00	40*	55.80	
						$199.80

THIS PAGE BOUND VER

William Campbell & Co.—Cont.

March 11th.

White,	1968	7	137.76	35*	89.55	
White Bdr.	500	28	140.00	45*	77.00	
White,	600					
	630	5 1-2	66.00	30*	46.20	
						$212.75

March 15th.

Wht.	280	6	16.80			
	2982	5 1-2	164.01	30*	126.57	
	250	6 1-2	16.25	32 1-2*	10.97	
	400	7	28.00	35*	18.20	
Wht. Bdr.	164	28	45.92	45*	25.26	
	36	15	5.40	40*	3.24	
	200	18	36.00	45*	19.80	
Brown,	5700	4	228.00	25*	171.00	
Brn. Bdr.	632	15	94.80	40*	56.88	
						$431.92

March 15th, 1899.—Cont.

10 oz. Gilt,	50	9	4.50	40*	2.70	
	30	8	2.40	37 1-2*	1.50	
	50	9	4.50	40*	2.70	

William Campbell & Co.—Cont.

	32	8	2.56	37 1-2*	1.60	
	610	7	42.70	35*	27.76	
10 oz. Bdr.	28	35	9.80			
	24	25	6.00			
	76	30	22.80	45*	27.78	
Ing. Hang.	100	25	25.00	30	17.50	
Ing. Bdr.	36	55	19.80			
Ing. Ceil.	100	15	15.00			
22 oz. Gold,	6	55	3.30	50*	19.05	
						$100.59
			March 16th.			
Wht.	2250	5 1-2	123.75	30*	86.63	
Wht.	192	18	34.56	45*	19.01	
Brown,	8400	4	336.00	25*	252.00	
	1102	15	165.30	40*	99.18	
						$456.82
			March 17th.			
Wht.	1132	5 1-2	62.26	30*	43.59	
	1200	6 1-2	78.00	32 1-2*	52.65	
Wht. Bdr.	26	15	3.90	40*	2.34	
	152	18	27.36	45*	15.05	
Tile,	176	20	35.20	30	24.64	

THIS PAGE BOUND VERTI

William Campbell & Co.—Cont.

22 oz. Emb. Gold,	50	15	7.50			
22 oz. Emb. Bdr.	12	50	6.00	50*	6.75	
12 oz. Gilt,	30	10	3.00	42 1-2*	1.73	
						$146.75

March 21st.

Wht.	21.50	6 1-2	139.75	32 1-2*	94.34	
	1150	5 1-2	63.25	30*	44.28	
Wht. Bdr.	268	18	48.24	45*	26.54	
Brown,	11200	4	448.00	25*	336.00	
	1382	15	201.30	40*	120.78	
						$621.94

March 27th.

Brown,	8000	4	320.00	25*	240.00
Brown Bdr.	1060	15	159.00	40*	95.40
White,	538	5 1-2	29.59		
	732	6	43.92	30*	51.46
	100	7	7.00	35*	4.55
	42	5 1-2	2.31	30*	1.62
	14	15	2.10	40*	1.26
	12	18	2.16	45*	1.19
	24	28	6.72		
Wht. Bdr.	148	23	34.04	45*	22.42

William Campbell & Co.—Cont.

	50	12 1-2	6.25	40*	3.75	
	12	40	4.80	50*	2.40	
Tints,	208	10	20.80	35*	13.52	
20 oz. Emb. Gt.	100	16	16.00			
20 oz. Emb. Bdr.	26	45	11.70			
20 oz. Emb. Gt.	60	15	9.00			
12 oz. Gilt,	50	18	9.00			
12 oz. Bdr.	12	50	6.00			
12 oz. Gilt,	32	15	4.80			
22 oz. Emb. Gt.	26	25	6.50	50*	31.50	
						$469.07

March 27th, 1899.—Cont.

22 oz. Emb. Gt. Bdr.	6	65	3.90	55*	1.76	
22 oz. Gilt,	16	15	2.40	50*	1.20	
Emb. Tap,	100	20	20.00	42 1-2*	11.50	
Flat,	50	12 1-2	6.25	40*	3.75	
White,	100	5 1-2	5.50	30*	3.85	
White Bdr.	12	15	1.80	40*	1.08	
White,	62	5 1-2	3.41	30*	2.39	
White Bdr.	12	28	3.36	45*	1.85	
						$27.38

March 30th.

White,	220	5 1-2	12.10	30*	8.47	

THIS PAGE BOUND VER

William Campbell & Co.—Cont.

	200	6 1-2	13.00	32 1-2*	8.78	
White Bdr.	48	28	13.44	45*	7.40	
White,	150	12 1-2	18.75	40*	11.25	
Brown,	1200	4	48.00	25*	36.00	
Brown Bdr.	130	15	19.50	40*	11.70	
Ing. Bdr.	100	50	50.00			
Ing. Ceil.	100	15	15.00	50*	32.50	
Tiles,	26	20	5.20	30	3.64	
						$119.74
			April 3rd.			
Emb. Silk,	30	22	6.60	42 1-2*	3.80	
Emb. Silk Bdr.	4	60	2.40	55*	1.08	
						$4.88
			April 4th.			
White,	2200	6 1-2	143.00	32 1-2*	96.53	
White Bdr.	500	23	115.00	45*	63.25	
White,	850	6	51.00	30*	35.70	
						$195.48
			April 10th.			
Emb. Silk,	2	22	.44	42 1-2*	.26	
						$.26

THE LEWIS VOIGHT & SONS CO.

William Campbell & Co.—Cont.

April 10th.

White,	112	5	5.60	30*	3.92	
White Bdr.	6	18	1.08	45*	.60	
White,	1404	6	84.24	30*	58.97	
White,	150	7	10.50	35	6.83	
White,	120	5 1-2	6.60	30*	4.62	
Wht. Bdr.	188	23	43.24			
White Bdr.	50	28	14.00	45*	31.49	
20 oz. Emb. Gilt,	100	20	20.00	50*	10.00	
20 oz. Emb. Bdr.	26	55	14.30	50*	7.15	
12 oz. Gilt,	58	13 1-2	7.83	45*	4.31	
						$127.89

April 13th.

Brown,	2000	4	80.00	25*	60.00	
Brown Bdr.	240	15	36.00	40*	21.60	
						$81.60

April 17th.

Brown,	1000	4	40.00	25*	30.00	
Brown Bdr.	120	15	18.00	40*	10.80	
						$40.80

THIS PAGE BOUND VERTIC

ICAL IN BOOK

William Campbell & Co.—Cont.

April 18th.

White,	600	7	42.00	35*	27.30	
White Bdr.	36	18	6.48	45*	3.57	
White,	150	5 1-2	8.25	30*	5.78	
						$36.65

April 19th.

White,	28	6	1.68	30*	1.18	
						$1.18

April 14th, 1899.

White,	300	5 1-2	16.50	30*	11.55	
	900	4 1-2	40.50	27 1-2*	29.37	
	14	15	2.10	40*	1.26	
Ing. Hang.	1100	12 1-2	137.50			
	600	20	120.00	30	180.25	
20" Emb. Gt.	730	15	109.50			
	100	16	16.00			
22" Emb. Gt.	200	25	50.00	50*	87.75	
	40	70	28.00	55*	12.60	
22" Gilt,	80	18	14.40			
20" Gt. Bdr.	50	45	22.50	50*	18.45	
12 oz. Gilt,	120	11	13.20	42 1-2*	7.59	

William Campbell & Co.—Cont.

Emb. Satin,	200	20	40.00			
Dam. Stripe,	166	18	29.88	42 1-2*	40.19	
Ing. Ceil.	550	15	82.50	50*	41.25	
Tile,	48	50	24.00	45	13.20	
						$443.46

April 20th.

Brn.	250	4	10.00	25*	7.50	
Wht.	240	5 1-2	13.20			
	800	5	40.00			
	392	6	23.52	30*	53.71	
	230	6 1-2	14.95	32 1-2*	10.10	
	200	7	14.00	35*	9.10	
Wht. Bdr.	56	28	15.68	45*	8.63	
	84	15	12.60	40*	7.56	
	42	18	7.56			
	20	22	4.40	45*	6.58	
12 oz. Gilt,	10	45	4.50	50*	2.25	
Ing.	400	12 1-2	50.00			
	100	30	30.00	30	56.00	
Ing. Bdr.	10	50	5.00			
	6	55	3.30			
Ing. Ceil.	z 933	15	139.95			
20" Emb. Gold,	50	45	22.50			

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TICAL IN BOOK

William Campbell & Co.—Cont.

22"	100	23	23.00	50*	96.88	
22" Emb. Gold Bd.	50	65	32.50	55*	14.63	
22" Gilt,	110	18	19.80	50*	9.90	
						$282.84
			April 20th.			
Emb. Silk	2	22	.44	42 1-2*	.25	
						$.25
			April 21st			
White,	50	12 1-2	6.25	40*	3.75	
White Bdr.	12	40	4.80	50*	2.40	
White,	40	6	2.40	30*	1.68	
						$7.83
			April 21st.			
Exclusive,	6	95	5.70			
Exclusive Bdr.	2	2.00	4.00			
Exclusive,	6	25	1.50	25*	8.40	
						$8.40
			April 22nd.			
White,	12	12 1-2	1.50	40*	.90	
White Bdr.	2	40	.80	50*	.40	

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William Campbell & Co.—Cont.

White,	16	6	.96	30*	.67	
						$1.97
			April 24th.			
Var Tile,	2	50	1.00	45	.55	
						$ .55
			April 26th, 1899.			
Brown,	1200	4	48.00	25*	36.00	
White,	1954	6 1-2	127.01	32 1-2*	85.74	
	1570	5 1-2	86.35			
	950	6	57.00	30*	100.35	
White Bdr.	14	22	3.08			
	70	18	12.60	45*	8.63	
	32	15	4.80	40*	2.88	
	326	23	74.98			
	170	28	47.60	45*	67.42	
Satin,	250	20	50.00			
	150	18	27.00			
Emb. Tap,	400	25	100.00	42 1-2*	101.78	
Exclusive,	100	75	75.00	25*	56.25	
12 oz. Gilt,	708	10	70.80	42 1-2*	40.71	
20" Emb. Gt.	116	16	18.56			
	106	15	15.90	50*	17.23	

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William Campbell & Co.—Cont.

12 oz. Gt. Bdr.	30	40	12.00	50*	6.00	
	216	10	21.60	42 1-2*	12.42	
Bro. Bdr.	24	15	3.60	40*	2.16	
Ingrain,	300	12 1-2	37.50			
	600	25	150.00	30	131.25	
Ingrain Bdr.	150	55	82.50			
Ingrain Ceil.	200	15	30.00	50*	56.25	
						$725.07
			April 27th.			
Ing.	150	12 1-2	18.75			
Tile,	400	20	80.00	30	69.13	
Brown,	1600	4	64.00	25*	48.00	
Brown Bdr.	200	15	30.00	40*	18.00	
						$135.13
			April 27th.			
20 Emb. Gilt Bdr,	30	55	16.50	50*	8.25	
12 oz. Gilt,	60	12 1-2	7.50	45*	4.13	
						$12.38
			May 1st.			
White,	7500	5 1-2	412.50	30*	288.75	
White Bdr.	1250	25	312.50	45*	171.88	

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William Campbell & Co.—Cont.

Var. Tiles,	482	20	96.40	30	67.48	
10 oz. Bdr.	314	7	78.56	37 1-2*	49.10	
10 oz. Bdr.	246	35	86.10	45*	47.36	
10 oz. Gilt,	982	8	21.98	35*	14.29	
						$638.86
			May 1st.			
20 Emb. Gold,	16	16	2.56			
20 Emb. Bdr.	3	45	1.35			
20 Emb.	8	15	1.20	50*	2.56	
						$2.56
			May 1st.			
Tile Bord.	1	50	.50	45	.28	
						$ .28
			May 2nd.			
Brown,	13350	4	534.00	25*	400.50	
Brown Bdr.	1640	15	246.00	40*	147.60	
						$548.10
			May 2nd.			
Exclusive,	8	80	6.40			
Exclusive,	5	95	4.75			

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William Campbell & Co.—Cont.

Exclusive Bdr.	3	1.50	4.50			
Exclusive Bdr.	3	2.00	6.00			
Exclusive,	10	25	2.50	25*	18.11	
						$18.11
			May 3rd, 1899.			
Brown,	5000	4	200.00	25*	150.00	
Brown Bdr.	600	15	90.00	40*	54.00	
						$204.00
			May 4-h.			
Brown,	2000		80.00	25*	60.00	
Brown Bdr.	240	15	36.00	40*	21.60	
						$81.60
			May 5th.			
Brown,	9074	4	362.96	25*	272.22	
Brown Bdr.	1090	15	163.50	40*	98.10	
						$370.32
			May 10th.			
Exclusive,	2	25	.50	25*	.38	
						$ .38

THE LEWIS VOIGHT & SONS CO.

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William Campbell & Co.—Cont.

May 17th.

White Bdr.	72	23	16.56	45*	9.11	
	50	5 1-2	2.75	30*	1.93	
	60	12 1-2	7.50	40*	4.50	
	40	6	2.40	30*	1.68	
						$17.22

May 19th.

White Bdr.	150	5 1-2	8.25	30*	5.78	
						$5.78

May 19th.

Decoration,	11	55	6.05	50*	3.03	
Decoration,	1 doz.	1.25	1.25	55*	.57	
Decoration,	1	40	.40			
22" Gilt,	8	15	1.20	50*	.80	
						$4.40

May 27th.

Decoration,	1 doz.		1.25	55*	.56	
						$ .56

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William Campbell & Co.—Cont.

June 10th.

White,	2050	6 1-2	133.25	32 1-2*	89.95	
White Bdr.	462	23	106.26	45*	58.45	
White,	1072	5 1-2	58.96	30*	41.28	
						$189.68
Total						$28,769.51

Conowingo Wall Paper Co.

September 27, 1898 (Oct 1).

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
Blank	5000	4 1-2	225.00	27 1-2	163.12	
	600	15	90.00	40	54.00	
	2500	4 1-2	112.50	27 1-2	81.56	
						$298.68

Oct. 10th.

Blank,	12000	4 1-2	540.00	27 1-2	391.50	
	9000	5	450.00	30	315.00	
	1740	15	261.00	40	156.60	
						$863.10

THE LEWIS VOIGHT & SONS CO.

ICAL IN BOOK

Conowingo Wall Paper Co.

Nov. 22nd.

Blank,	6000	4 1-2	270.00	27 1-2	195.75	
2 b Bord.	400	15	60.00	40*	36.00	
Blank,	6000	5	300.00	30*	210.00	
2 b Bord.	480	15	72.00	40*	43.20	
Blank,	850	5	42.50	30*	29.75	
2 b Bord.	80	15	12.00	40*	7.20	
Blank,	5200	6 1-2	338.00	32 1-2*	228.15	
C Blank,	2262	5 1-2	124.41	30*	87.09	
1 b Bord.	1050	28	2.94	45*	161.70	
						$998.84

Dec. 31st.

White Blk.	11400	4 1-2	513.00	27 1-2*	371.93	
	6930	5	346.50	30*	242.55	
2 Band Bord.	1446	15	216.90			
10 oz. Gold,	4500	11	495.00	40*	427.14	
Ceiling,	2516	8	201.28	37 1-2*	125.80	
1 Bb. B Bord.	1194	40	477.60	50*	238.80	
						$1406.22

Jan. 6th, 1899.

1 b B Bord.	50	28	14.00	40	8.40	
						$8.40

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Conowingo Wall Paper Company.—Cont.

Feb. 7th.

White,	5050	4 1-2	227.25	27 1-2*	164.76	
	15216	5 1-2	836.88	30*	585.82	
	4600	6 1-2	299.00	32 1-2*	201.83	
	2988	5 1-2	164.34	30*	115.04	
2 B Bord.	838	15	125.70	40*	75.42	
1 B B Bord.	1614	25	403.50			
2 Bd. Bord.	250	18	45.00			
1 Bd. Bord. B,	1357	28	379.96	45*	455.66	
10 oz. Gold,	2400	7	168.00			
Ceiling,	1340	7	93.80	35*	170.17	
	194	8	15.52	37 1-2*	9.70	
2 B Bord.	310	20	62.00	45*	34.10	
1 Bd. B Bord.	116	40	46.40	50*	23.20	
						$1835.70

March 6th.

White Blk.	600	4 1-2	27.00	27 1-2*	19.58	
	2088	5	104.40			
	1600	5 1-2	88.00	30*	134.68	
2 Bd. Bord.	374	15	56.10	40*	33.66	
1 B B Bord.	140	25	35.00	45*	19.25	
10 oz. Gold,	80	8	6.40	37 1-2*	4.00	

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Conowingo Wall Paper Company.—Cont.

12 oz. Gold,	224	13 1-2	30.24	45*	16.63	
12 oz. Gold,	144	11	15.48	42 1-2*	9.11	
10 oz. Gold,	300	11	33.00	40*	19.80	
	300	8	24.00	37 1-2*	15.00	
2 B Bord.	4	20	.80			
	8	25	2.00	45*	1.54	
1 B B Bord.	58	45	26.10			
	92	40	36.80	50*	31.45	
						$304.70
			March 14th, 1899.			
Blank,	4400	4 1-2	198.00	27 1-2*	143.55	
	200	5	10.00	30*	7.00	
"2 b Bord.	382	15	57.30	40*	34.38	
						$184.93
			March 29th.			
Blank,	2000	6 1-2	130.00	32 1-2*	87.75	
	1600	5 1-2	88.00	30*	61.60	
"2 B Bord.	50	18	9.00			
	476	28	133.28	45*	78.25	
						$227.60

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Conowingo Wall Paper Company.—Cont.

			April 14th.			
Blank,	180	5	9.00			
	150	5 1-2	8.25	30*	12.08	
"2 b Bord.	74	15	11.10	40*	6.66	
"lb Bord.	10	25	2.50	45*	1.38	
10 oz. Gold,	50	7	3.50	35*	2.28	
"2 b Bord.	12	20	2.40	45*	1.32	
						$23.72
			April 22nd.			
10 oz. Gold Side,	950	11	104.50	40*	62.70	
Ceiling,	600	8	48.00	37 1-2*	30.00	
Gold Bd. Bl. Bord.	240	40	96.00	50*	48.00	
Gold Blank Bl. Bord.	280	28	78.40	45*	43.12	
						$183.82
			May 11th.			
Blank,	100	5	5.00	30*	3.50	
Blank 2b. Bord.	4	15	.60	40*	.36	
						$3.86
			May 19th.			
Blank,	1000	6 1-2	65.00	32 1-2*	43.88	
	400	5 1-2	22.00	30*	15.40	

Conowingo Wall Paper Company.—Cont.

Blank Bord.	200	28	56.00	45*	30.80	
						$90.08

June 10th.

Blank,	400	4 1-2	18.00	27 1-2*	13.05	
	100	5	5.00	30*	3.50	
	150	6 1-2	9.75	32 1-2*	6.59	
Blank 2 b. Bord	105	15	15.90	40*	9.54	
10 oz. Gold.	30	8	2.40	37 1-2*	1.50	
" " lb. Bord.	14	40	5.60	50*	2.80	
						$36.98

Cory Heller Co.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	Total,
						$6466.63

October 11th, 1898.

Wht. Blk.	3000	5			
	750	25 1-2	165.00	30	115.50
	1500	5	187.50	45	103.13
	3000	5 1-2	82.50	30	57.75
	350	15 1-2	165.00	30	115.50
	1500	5	52.50	40	31.50

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Cory Heller Co.—Cont.

3000	5 1 2	82.50	30	57.75	
350	15	150.00	30	105.00	
1500	5	52.50	40	31.50	
2400	5	75.00	30	52.50	
300	15 1-2	132.00	30	92.40	
1200	5	45.00	40	27.00	
2400	5	60.00	30	42.00	
300	15 1-2	132.00	30	92.40	
1200	5	45.00	40	27.00	
2000	7	60.00	30	42.00	
500	28	140.00	35	91.00	
1000	6 1-2	140.00	45	77.00	
		65.00	32 1-2	43.88	
2000	7	140.00	35	91.00	
500	28	140.00	45	77.00	
1000	6	60.00	30	42.00	
2000	5 1-2	110.00	30	77.00	
500	25	125.00	45	68.75	
1000	5 1-2	55.00	30	38.50	
2000	5 1-2	110.00	30	77.00	
500	25	125.00	45	68.75	
1000	5 1-2	55.00	30	38.50	
					$1,783.31

December 9th.

Cory Heller Co.—Cont.

Dec. 9th.

Wht. Blk.	50	5 1-2	2.75	30*	1.93
	6	15	.90	40*	.54
	30	5 1-2	1.65	30*	1.16
	100	6 1-2	6.50	32 1-2*	4.39
	24	28	6.72	45*	3.70
	50	6	3.00		
	200	5 1-2	11.00	30*	90.65
	2100	5 1-2	115.50		
	286	15	42.90	40*	25.74
	800	5	40.00		
	1800	5 1-2	99.00	30*	97.30
	252	15	37.80	40*	22.68
	900	5	45.00	30*	31.50
Wht. Blk.	1200	5 1-2	66.00	30*	46.20
	300	25	75.00	45*	41.25
	750	5 1-2	41.25	30*	28.88
	600	7	42.00	35*	27.30
	268	28	75.04	45*	41.27
	400	6	24.00	30*	16.80
Brz.	50	11	5.50	42 1-2*	3.16
	14	40	5.60	50*	2.80
	52	11	5.72	42 1-2*	3.29
	8	40	3.20	50*	1.60
	14	10	1.40	42 1-2*	.81

THIS PAGE BOUND VERT

Cory Heller Co.—Cont.

Tap,	550	15	82.50	40*	49.50	
	186	45	83.70	50*	41.85	
	380	15	57.00	40*	34.20	
						$618.50

Dec. 15, 1898.

Wht. Blk.	500	5 1-2	27.50	30*	19.25	
	140	25	35.	45*	19.25	
	226	5 1-2	12.43	30*	10.80	
	50	6	3.	30*		
	8	18	1.44	45*	.79	
	40	5 1-2	2.20	30*		
	2100	6	126.	30*	89.74	
	520	28	145.60	45*	80.08	
	1250	5 1-2	68.75	30*	48.13	
Bronze,	50	9	4.50	40*	2.70	
	12	30	3.60	45*	1.98	
	30	9	2.70	40*	1.62	
Emboss,	200	18	36.00	50*	18.00	
	50	55	27.50	50*	13.75	
	100	15	15.00	50*	7.50	
						$313.59

THE LEWIS VOIGHT & SONS CO.

TICAL IN BOOK

Cory Heller Co.—Cont.

Dec. 24, 1898.

Blank,	100	7 1-2	7.50	35*	4.88	
	24	30	7.20	45*	3.96	
	50	6 1-2	3.25	32 1-2*	2.20	
Bronze,	300	13 1-2	40.50	45*	22.28	
Bld.	80	45	36.00	50*	18.00	
	180	12 1-2	22.50	45*	12.38	
						$63.70

Jan. 8, 1899.

Blk.	600	5	30.00			
	50	5 1-2	2.75	30*	26.78	
	100	5 1-2	5.50			
	100	6 1-2	6.50	32 1-2*	4.39	
Bdrs.	96	15	14.40	40*	8.64	
	6	25	1.50			
	6	28	1.68	45*	1.75	
						$41.56

Jan. 20, 1899.

W. Blank,	50	6	3.00			
	26	5 1-2	1.43	30*	3.11	

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Cory-Heller Co.—Cont.

	150	6 1-2	9.75	32 1-2*	6.59	
Col. Bdr.	6	18	1.08	45*		
	24	28	6.72	45*	4.29	
Bronze,	160	9	14.40			
10 oz.	250	11	27.50	40*	25.14	
Brnz. Bdr.						
12 oz.	64	35	22.40	40*	12.32	
Emb. 14 oz.	124	11	13.64	42 1-2*	7.85	
Bronze,						
10 oz.	68	9	6.12	40*	3.68	
Emb. 14 oz.	50	20	10.00			
	30	18	5.40	50*	11.45	
	50	15	7.50			
Brz. 12 oz.	26	10	2.60	42 1-2*	1.50	
Tapestry, 14 oz.	516	15	77.40	40*	46.44	
	50	18	9.00	42 1-2*	5.18	
Tap. Frz. 14 oz.	72	45	32.40			
	16	50	8.00	50*	20.20	
Emb. Frz. 14 oz.	32	40	12.80			
	12	50	6.00			
	10	55	5.50	50*	12.15	
						$159.90

Cory-Heller Co.—Cont.

Jan. 28th, 1899.

Wht. Blk.	900	5 1-2	49.50			
	400	5	20.00	30*	48.65	
Wht. Bdr.	104	15	15.60	40*	9.36	
	50	6	3.00	30*	2.10	
	700	7	49.00	35*	31.85	
	450	6	27.00	30*	18.90	
Wht. Bdr.	8	18	1.44			
Bld. Bdr.	190	28	53.20	45*	30.06	
10 oz. Brz.	160	9	14.40	40*	8.64	
Bld. Bze. Bdr.	26	35	9.10	45*	5.01	
14 oz. Tap.	124	15	18.60	40*	11.16	
14 oz. Tp. Frz.	12	45	5.40	50*	2.70	
						$168.43

Feb. 18th, 1899.

W. Blanks,	260	5 1-2	14.30			
	60	5	3.00	30*	24.71	
	300	6	18.00			
W. Bdr.	16	15	2.40			
	60	15	9.00	40*	6.84	
	16	18	2.88			
Frieze,	50	28	14.00	45*	9.29	

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Cory-Heller Co.—Cont.

Brz. 12 oz.	80	11	8.80	42 1-2*	5.06	
Brz. Frz.	12	35	4.20			
	82	12 1-2	10.25	45*	7.95	
	12	40	4.80	50*	2.40	
Tap. 14 oz.	350	18	63.00	42 1-2*	36.23	
"Ceil."	300	15	45.00	40*	27.00	
"Frze."	150	50	75.00	50*	37.50	
						$156.98

Feb. 24th, 1899.

Blanks,	1860	5 1-2	102.30	30*	71.61	
Bld. Bdr.	270	25	67.50	45*	37.13	
						$108.74

March 4th.

Wht. Blk.	466	5 1-2	25.63			
	650	6	39.00	30*	45.24	
Wht. Bdr.	8	15	1.20	40*	.72	
	8	18	1.44			
Bld. Frieze,	12	25	3.00	45*	25.55	
	150	28	42.00			
Bronze,	30	11	3.30	42 1-2*	1.90	
						$73.41

Cory-Heller Co.—Cont.

March 10th.

Blanks,	50	5 1-2	2.75	30*	1.93	
Blanks, Ceil.	26	5	1.30	30*	.91	
Blanks Bor.	6	15	.90	40*	.54	
Embossed,	74	20	14.80			
Emb. Frieze,	20	55	11.00	50*	17.04	
Emb. Ceil.	46	18	8.28			
Tapestry,	100	18	18.00	42 1-2*	10.35	
						$30.77

April 10th, 1899.

Wht. Blk.	200	6	12.00	30*	8.40	
Bdr.	20	15	3.00	40*	1.80	
Tap. Frieze,	14	45	6.30	50*	3.15	
						$13.35

April 20th.

Wht. Blk.	500	5 1-2	27.50	30*	19.25	
	50	6 1-2	3.25	32 1-2*	2.20	
	14	15	2.10	40*	1.26	
Bld.	8	25	2.00	45*	1.10	
						$23.81

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ICAL IN BOOK

10—212

May 1st, 1899.

Wht. Blk.	600	6	36.00			
Ceil.	300	5 1-2	16.50	30*	36.75	
Bld. Frze.	150	28	42.00	45*	23.10	
						$59.85
Total.						$3615.90

Creswell & Washburn.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
			Nov. 4th, 1898.			
White Bl.	86	5	4.30			
	86	5 1-2	4.73			
	152	6	9.12	25	13.62	
	250	6 1-2	16.25	27 1-2	11.78	
Borders,	12	15	1.80	35	1.17	
	12	22	2.64	40	1.58	
	38	28	10.64	40	6.38	
						$34.53

Dec. 1st.

THE LEWIS VOIGHT & SONS CO.

147

Creswell & Washburn.—Cont.

12 oz. Brz	900	13 1-2	121.50	40	72.90	
12 oz. Brz.	450	11	135.00	45	74.25	
Brz. Bdr.	300	45	49.50	37 1-2	30.89	
						$178.04
			Dec. 7th.			
W. Blks.	600	6	36.00			
	80	5	4.00	25	30.00	
12 oz. Brz.	150	15	22.50	45	12.38	
	150	12 1-2	18.75			
Color Brds.	238	18	42.84	40	36.96	
	6	15	.90	35	.59	
Brz. Brds.	99	50	49.50	45	27.33	
						$107.16
			Dec. 10th.			
Brz. 12 oz.	1600	13 1-2	216.00	40	129.60	
Brze. Bdr.	300	45	135.00	45	74.25	
						$203.85
			Dec. 30th.			
12 oz. Br.	1600	11	176.00	37 1-2	110.00	
	500	13 1-2	67.50	40	40.50	
	900	15	135.00	45	74.25	

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ICAL IN BOOK

Creswell & Washburn.—Cont.

	400	12 1-2	50.00	40	30.00	
Bord. Brze.	300	40	120.00			
	80	45	36.00			
	200	50	100.00	45	140.80	
						$395.55
			Feb. 3rd, 1899.			
W. Blank,	402	5	20.10			
	80	5 1-2	4.40			
	1152	6	69.12	25	70.22	
	1700	6 1-2	110.50	27 1-2	80.12	
Col. Bdr.	44	15	6.60	35	4.29	
	12	18	2.16			
	432	28	120.96	40	73.88	
						$228.51
			Feb. 24th.			
W. Blk.	502	5 1-2	27.61			
	4056	6	243.36	25	203.23	
	100	6 1-2	6.50	27 1-2	4.71	
12 oz. Bze.	480	12 1-2	60.00	40	36.00	
	500	15	75.00	45	41.25	
Col. Bdr.	222	18	39.96			
Bze. Bdr.	16	22	3.52	40	26.09	

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Creswell & Washburn.—Cont.

	14	45	6.30			
	188	50	94.00	45	55.17	
						$366.45
			March 9th, 1899.			
W. Blks.	182	7	12.74			
	350	7 1-2	26.25	30	27.30	
12 oz. Brz.	330	11	36.30	37 1-2	22.69	
	900	13 1-2	121.50			
Col. Brd.	84	30	25.20	40	88.02	
Brze. Bdr.	238	45	107.10	45	58.91	
						$196.92
			March 28th.			
Wht. Blks.	1100	6	66.00	25	49.50	
12 oz. Brz.	400	11	44.00	37 1-2	27.50	
Col. Bdr.	132	18	22.32	40	13.39	
Brze. Bdr.	60	40	24.00	45	13.20	
						$103.59
			April 6th.			
Wht. Blks.	100	6	6.00	25	4.50	
	100	7 1-2	7.50	30	5.24	
12 oz. Brz.	76	9	6.84	35	4.45	

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CAL IN BOOK

150

	150	10	15.00			
	486	11	53.46	37 1-2	42.79	
Col. Bdr.	34	18	6.12			
	6	20	1.20			
12 oz. Bdr.	24	35	8.40	40	9.44	
	118	40	47.20			
	28	50	14.00	45	33.66	
						$100.09

April 20th.

W. Blks.	250	6 1-2	16.25	27 1-2	11.79	
	150	6	9.00	25	6.75	
						$18.54
Total						$1,933.23

Henry Gledhill & Co.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	

November 2, 1898.

Whites,	740	5 1-2	40.70	25	30.53	
	1580	6	94.80	25	71.10	
	2782	6 1-2	180.83	27 1-2	131.10	
	100	7	7.00	30	4.90	

Henry Gledhill & Co.—Cont.

	1650	7 1-2	123.75	30	86.63	
Emb.	162	15	24.30	45	13.37	
Col. Bdr.	26	15	3.90	35	2.34	
	32	18	5.76	40	3.46	
	36	22	7.92	40	4.76	
	35	23	8.05	40	4.83	
	538	28	150.64	40	90.39	
	450	25	112.50	40	67.50	
Emb. Bdr.	24	50	12.00	45	6.60	
						$517.71

November 12th.

Whites,	1050	5 1-2	57.75	25	43.31	
	2000	6	120.00	25	90.00	
Col. Bdr.	550	28	154.00	40	92.40	
						$225.71

Nov. 19th.

Col. Bdr.	1430	5 1-2	78.87			
	1640	6	98.40	25	132.96	
	50	7	3.50	30	2.45	
	48	15	7.20	35	4.68	
	8	18	1.44			
	192	22	42.24			

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Henry Gledhill & Co.—Cont.

	86	28	24.08	40	40.66	
						$180.75
			November 21st.			
Whites,	850	5 1-2	46.75			
	1650	6	99.00	25	109.32	
Col. Bdr.	450	28	126.00	40	75.60	
						$184.92
			Nov. 28th.			
Whites,	1500	5 1-2	82.50			
	724	6	43.44	25	94.46	
Col. Bdr.	54	18	9.72	40	5.84	
	120	15	18.00	35	11.70	
Gilts,	32	13 1-2	4.32	40	2.60	
	50	16	8.00	45		
G. Bds.	12	45	5.40			
Embossed,	80	18	14.40			
Emb. Bdr.	12	55	6.60	45	18.92	
						$133.52
			December 3rd.			
White,	1538	5 1-2	84.59			
	50	6	3.00	25	65.70	

TICAL IN BOOK

Henry Gledhill & Co.—Cont.

Col. Bord.	108	15	16.20	35	10.53	
	8	18	1.44			
	12	23	2.76			
Embossed,	1900	12 1-2	237.50	40	145.02	
	160	15	24.00			
	2340	18	421.20			
Emb. Bord.	350	45	157.50			
	24	50	12.00			
	510	55	280.50	45	492.36	
						$713.61

December 8th, 1898.

Embossed,	30	12 1-2	3.75	40	2.25	
Embossed,	50	15	7.50			
Embossed Brd.	12	50	6.00			
Gilt 12 oz.	350	20	70.00			
	650	23	149.50	45	128.15	
Gilt Bdr. 12 oz.	200	65	130.00	50	65.00	
						$195.40

Dec. 10th.

Gilts. 12 oz.	1000	15	150.00			
Gilt Bdr.	200	45	90.00	45	132.00	
						$132.00

THIS PAGE BOUND VERTI

Henry Gledhill & Co.—Cont.

Dec. 14th.

Whites,	1050	5 1-2	57.75	25	43.32	
	2000	7	140.00	30	98.00	
Col. Bdr.	550	8	126.50	40	75.90	
Embossed,	300	12 1-2	37.50	40	22.50	
Embossed Bdr.	60	45	27.00	45	14.85	
						$254.57

Dec. 19th.

Whites,	220	5 1-2	12.10			
	2500	6	150.00	25	121.58	
	200	7	14.00	30	9.80	
Col. Bdr.	14	18	2.52			
	50	23	11.50			
	400	28	112.00	40	75.62	
						$207.00

Dec. 22nd.

Whts.	568	5 1-2	31.24	25	23.43
	1150	6	69.00	25	51.75
Col. Bdr.	20	18	3.60		
	178	23	40.94	40	26.73
Emb.	888	22	195.36	45	107.45

Henry Gledhill & Co.—Cont.

Emb. Br.	186	65	120.90	50	60.45	
						$269.81
		Jan. 5th, 1899.				
Whts.	686	5	34.30			
	800	5 1-2	44.00	25	58.73	
	150	6 1-2	9.75	27 1-2	7.07	
Col. Bdrs.	132	15	19.80	35	12.87	
	64	28	17.92	40	10.76	
Gilts 10 oz.	306	7	21.42	30	15.00	
G. Bdr. 10 oz.	28	20	5.60	40	3.36	
Emb.	20	18	3.60			
Emb. Bdr.	3	55	1.65	45	2.89	
						$110.68
		Jan. 13th.				
Whts.	1986	5 1-2	109.23	25	81.92	
	26	6 1-2	1.69	27 1-2	1.23	
	50	7	3.50	30	2.45	
Col. Bdr.	150	15	22.50	35	14.63	
	12	23	2.76	40	1.66	
Gilts 10 oz.	100	7	7.00	30	4.90	
Gilts 12 oz.	60	10	6.00			
	100	11	11.00	37 1-2	10.63	

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Henry Gledhill & Co.—Cont.

G. Bdr. 10 oz.	6	20	1.20	40	.72	
G. Bdr. 12 oz.	12	40	4.80	45	2.64	
						$120.78
			Jan. 23rd, 1899.			
Whites,	762	5 1-2	41.91			
	1200	6	72.00	25	85.44	
	400	6 1-2	26.00	27 1-2	18.85	
	300	7 1-2	22.50	30	15.75	
Col. Bdr.	8	15	1.20	35	.78	
	6	18	1.08			
	160	22	35.20			
	12	23	2.76			
	140	25	35.00	40	44.43	
Emb.	842	18	151.56			
	24	22	5.28			
Emb. Bdr.	112	55	61.60	45	120.15	
	4	65	2.60	50	1.30	
						$286.70
			Feb. 7th.			
Whites,	930	5 1-2	51.48			
	162	5	8.10			
	768	6	46.08	25	79.25	

THE LEWIS VOIGHT & SONS CO.

Henry Gledhill & Co.—Cont.

	100	7	7.00	30	4.90	
	500	6 1-2	32.50	27 1-2	23.57	
Col. Bdr.	26	15	3.90	35	2.54	
	18	18	3.24			
	44	23	10.12			
	312	28	87.36	40	60.44	
12 oz. Gilt,	142	10	14.20			
	200	11	22.00	37 1-2	22.63	
12 oz. Gilt,	110	15	16.50			
G. Bdr.	52	40	20.80			
	64	45	28.80			
Emb.	500	15	75.00			
	80	18	14.40			
Emb. Bdr.	72	50	36.00	45	105.33	
						$298.66

Feb. 21st.

Gilt 12 oz.	148	10	14.80			
	254	11	27.94	37 1-2	26.72	
	30	15	4.50			
	50	18	9.00	45	7.43	
Gilt Bdr.	64	40	25.60			
	10	55	5.50	45	17.11	
Embossed	718	12 1-2	89.75	40	53.85	

THIS PAGE BOUND VER

Henry Gledhill & Co.—Cont.

	320	15	48.00			
Emb. Bdr.	148	45	66.60			
	50	50	25.00	45	76.78	
						$181.89
			March 1st.			
Whites,	200	5 1-2	11.00	25	8.25	
Col. Bdr.	12	23	2.76			
	50	28	14.00	40	10.66	
Emb.	26	16	4.16			
	50	18	9.00			
Emb. Bdr.	14	55	7.70			
Gilts 12 oz.	300	20	60.00			
	200	23	46.00	45	69.78	
G. Bdr.	154	65	100.10	50	50.05	
						$138.14
			March 6th, 1899.			
White,	82	5 1-2	4.51			
	150	6	9.00	25	10.13	
	200	6 1-2	13.00	27 1-2	9.43	
	300	7 1-2	22.50	30	15.75	
Col. Bdr.	20	22	4.40			
	80	25	20.00	40	14.64	

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Henry Gledhill & Co.—Cont.

Gilt 10 oz.	458	7	32.06	30	22.45	
Gilt Bdr.	28	20	5.60	40	3.36	
Gilt 12 oz.	200	20	40.00			
Gilt,	300	23	69.00	45	59.95	
Gilt Bord.	80	65	52.00	50	26.00	
Emb.	42	22	9.24	45	5.09	
Emb. Bord.	6	65	3.90	50	1.95	
						$168.75
			March 16th.			
Glt. 10 oz.	50	7	3.50	30	2.45	
Emb.	500	18	90.00			
Emb. Bdr.	80	55	44.00	45	73.70	
						$76.15
			March 25th.			
Whites,	50	7	3.50	30	2.45	
	32	6 1-2	2.08	27 1-2	1.51	
Gold Bdr.	12	23	2.76	40	1.66	
						$5.62
			March 30th.			
Whites,	350	5 1-2	19.25	25	14.44	
	150	6 1-2	9.75	27 1-2	7.07	

THIS PAGE BOUND VER

Henry Gledhill & Co.—Cont.

	600	7	42.00	30	29.40	
Col. Bds.	122 Lot	23	28.06	40	16.84	
Embossed,	250	18	45.00			
Glts. 12 oz.	50	15	7.50	45	28.88	
						$96.63
			March 31st.			
Mica	6	18	1.08	37 1-2	.68	
						$ .68
			April 18th.			
Whites,	300	5 1-2	16.50			
	450	6	27.00	25	32.63	
	100	7	7.00	30	4.90	
Col. Bdr.	66	15	9.90	35	6.44	
	60	23	13.80	40	8.28	
						$52.25
			April 25th.			
Whites,	60	6 1-2	3.90	27 1-2	2.83	
						$2.83
			April 27th.			
Whites,	234 Lot					

ERTICAL IN BOOK

Henry Gledhill & Co.—Cont.

	110 lot	5 1-2	18.92	25	14.19	
						$14.19
			May 2nd.			
Col. Bdr.	16	22	6.84	25	5.13	
Whites,	114	6	3.52	40	2.11	
						$7.24
			May 10th.			
Gilt Bdr.	6	40	2.40	45	1.32	
						$1.32
			June 8th.			
Whites,	100	7 1-2	7.50	30	5.25	
	200	6 1-2	13.00	27 1-2	9.43	
Col. Bdr.	12	22	2.64			
Col. Bd.	8	28	2.24	40	2.93	
Emb.	80	22	17.60			
Embsd. Bdr.	8	45	3.60			
Glt. Bdr.	24	45	10.80	45	17.60	
						$35.21
			June 13th, 1899.			
Whites,	30 lot	6 1-2	1.95	27 1-2	1.42	

THIS PAGE BOUND VERTI

11—212

Henry Gledhill & Co.—Cont.

Emb.	16	18	2.88			
Emb. Bdr.	24	55	13.20			
Glts. 12 oz.	22 lot	20	4.40			
	23 lot	23	5.98	45	14.56	
						$15.98
Total,						$4628.70

The Gossler & Wilt Wall Paper Co.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
			Oct. 5th, 1898.			
W. Blank,	13056	5	652.80	30	456.96	
	9800	5 1-2	539.00	30	377.30	
	5200	6	312.00	30	218.40	
	1290	15	193.50	40	116.10	
	600	18	108.00	45	59.40	
	450	22	99.00	45	54.45	
						$1282.61

THE LEWIS VOIGHT & SONS CO.

The Gossler & Wilt Wall Paper Co.—Cont.

Oct. 31st.

	7650	5	382.50	30*	267.75	
	5716	5 1-2	314.38	30*	220.07	
	3200	6	192.00	30*	134.40	
	1012	15	151.80	40*	91.08	
	368	18	66.24	45*	36.43	
	104	22	22.88	45*	12.58	
						$762.31

Nov. 23rd.

Blank,	1000	5	50.00	30*	35.00	
	1236	5 1-2	67.98	30*	47.59	
	2000	6	120.00	30*	84.00	
	250	5 1-2	13.75	30*	9.62	
	82	15	12.30	40*	7.38	
	22	18	3.96	45*	2.18	
	256	22	56.32	45*	30.98	
Gilt,	500	8	40.00	37 1-2*	25.00	
	182	11	20.02	42 1-2*	11.51	
	300	13 1-2	40.50	45*	22.28	
	50	15	7.50	50*	3.75	
	446					
	a-e484					

THIS PAGE BOUND VER

Gossler & Wilt Wall Paper Co.—Cont.

	a-c350					
	36	12 1-2	164.50	45*	90.47	
	44		13.20	45*	7.26	
	146					
	a-c136	45	126.90	50*	63.45	
	14	50	7.00	50*	3.50	
30" Ing.	a-c240	15	36.00	30	25.20	
Bdr. Ing.	18	55	9.90	50*	4.95	
20" Ing. Cl.	50	12 1-2	6.25	45*	3.44	
						$477.56

Nov. 30th.

Blank,	5750	5	287.50	30*	201.25	
	1906	5 1-2	104.83	30*	73.38	
12 oz. Gilt,	2800	6	168.00	30*	117.60	
	484	15	72.60	40*	43.56	
	100	18	18.00	45*	9.90	
	358	22	78.76	45*	43.32	
	1200	10	120.00			
	120	11	13.20	42 1-2*	76.59	
	52	12 1-2	6.50	45*	3.58	
	200	13 1-2	27.00	45*	14.85	
	2174	15	326.10			
	54	45	24.30			

Gossler & Wilt Wall Paper Co.—Cont.

	600	50	300.00	50*	325.20	
						$909.23
			Dec. 10th, 1898.			
Blank,	3476	5	173.80			
	2299	6	137.94	30*	218.22	
	292	15	43.80	40*	26.28	
	370	28	103.60	45*	56.98	
	80	8	6.40	37 1-2*	4.00	
	68	10	6.80	40*	4.08	
	104	12 1-2	13.00	45*	7.15	
	26	45	11.70	50*	5.85	
	6	35	2.10	45*	1.16	
	156	12 1-2	19.50	37 1-2*	12.19	
	26	45	11.70	50*	5.85	
						$341.76
			Dec. 20th.			
Blk.	900					
	a-c800					
	a-c373					
	1750	5	191.15	30*	133.81	
	2614					
	a-c782					
	180	5 1-2	196.88	30*	137.68	

Gossler & Wilt Wall Paper Co.—Cont.

	4950	6	297.00	30*	207.90	
	350	6 1-2	22.75	32 1-2*	15.36	
	3850	7	269.50	35*	175.18	
	80					
	a-c100					
	396	15	86.40	40*	51.84	
	42	22	9.24			
	1488	28	416.64	45*	234.24	
Glimmer,	1650	12 1-2	206.25	40*	123.75	
	950	10	95.00	37 1-2*	59.38	
	450	40	180.00	50*	90.00	
12 oz. Gilt,	120	10	12.00			
	120	11	13.20	42 1-2*	14.49	
	200	12 1-2	25.00			
	200	13	27.00	45*	28.60	
	100	45	45.00	50*	22.50	
Mica Ground	a-c 218	12 1-2	27.25	37 1-2*	17.03	
	a-c 28	45	12.60	50*	6.30	
30" Ing.	3350	12 1-2	418.75			
	1800	25	450.00	30	608.13	
Bdr.	1800	60	1080.00	55*	486.00	
20" Ing. Ceil.	150	12 1-2	18.75	45*	10.31	
22" Ing. Ceil.	.4718	15	707.70	50*	353.85	
						$2776.35

Gossler & Wilt Wall Paper Co.—Cont.

Dec. 23rd.

Glimmer,	50	11	5.50			
	50	9	4.50	37 1-2*	6.25	
	50	35	17.50	45*	9.63	
						$15.88

Dec. 29th, 1898.

Glim.	1800	11	198.00			
	900	9	81.00	37 1-2*	174.38	
	450	35	157.50	45*	86.63	
12 oz. Gilt,	300	10	30.00			
	1100	11	121.00	42 1-2*	86.83	
	1900	13 1-2	256.50	45*	141.08	
	200	15	30.00			
	520	45	234.00			
	114	50	57.00	50*	160.50	
30 oz. Ing.	1182	12 1-2	147.75			
	2110	15	316.50	25	348.19	
20 oz. Ing. Ceil.	114	12 1-2	15.50	45*	8.53	
22 oz. Ing. Ceil.	2066	15	310.05	50*	155.02	
Ing. Bor.	1058	55	581.90	50*	290.95	
	676	60	405.60	55*	182.52	
						$1,634.63

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Gossler & Wilt Wall Paper Co.—Cont.

Dec. 31st.

Blank,	483	5 1-2	26.57	30*	18.60	
	40	18	7.20	45*	3.96	
12 oz. Gilt,	1456	10	145.60	42 1-2*	83.72	
	234	40	93.60	50*	46.80	
30 oz. Ing.	644	12 1-2	80.50	30	56.35	
Ing. Ceil.	720	12 1-2	90.00	45*	49.50	
	186	55	102.30	50*	51.15	
	66	60	39.60	55*	17.82	
						$327.90

Jan. 5th, 1899.

12 oz. Gilt,	100	11	11.00	42 1-2*	6.33	
	50	40	20.00	50*	10.00	
						$16.33

Jan. 11th.

Blank,	1250	5	62.50		
	930	5 1-2	51.15	30*	79.56
	1500	6	90.00	32 1-2*	60.75
	100	15	15.00	40*	9.00
	196	22	43.12	45*	23.72
12 oz. Gilt,	1844	11	202.84	42 1-2*	116.64

	310	40	124.00	50*	62.00	
						$351.67
			Jan. 19th.			
Blank,	2170	5 1-2	119.35			
	3150	6	189.00	30*	215.85	
	52	18	9.36			
	434	22	95.48	45*	57.66	
12 oz. Gilt,	956	10	95.60	42 1-2*	54.97	
	150	12 1-2	18.75	45*	10.32	
	134	40	53.60			
	36	45	16.20			
Ing. Bor.	6	55	3.30	50*	36.55	
						$375.35
			Jan. 31st.			
Blk.	117	5 1-2	6.44	30*	4.51	
Glim.	150	8 1-2	12.75	35*		
	50	7 1-2	3.75			
	32	30	9.60	45*	10.73	
12 oz. Gold,	878	12 1-2	109.75	45*	65.65	
	376	15	56.40			
	104	45	46.80			
	94	50	47.00	50*	75.10	
						$155.99

THIS PAGE BOUND VER

Gossler & Wilt Wall Paper Co.—Cont.

Jan. 31, 1899, cont.

Pl. Ing.	22	12 1-2	2.75	30	1.93	
Ing. Ceil.	16	12 1-2	2.00	45*	1.10	
Ing.	6	55	3.30	50*	1.65	
F.	6	60	3.60	55*	1.62	
						$6.30

Feb. 27th.

Blank,	4683	5	234.15			
	1510	5 1-2	83.05			
	838	6	50.28	30*	257.24	
	451	15	67.65	40*	40.59	
	54	22	11.88			
	28	18	5.04			
	84	22	23.52	45*	22.24	
	50	10	5.00	37 1-2*	3.13	
Glim.	26	7 1-2	1.95	35*	1.27	
	12	35	4.20	45*	2.31	
	120	10	12.00	37 1-2*	7.50	
	90	40	36.00	50*	18.00	
10 oz. Gold,	834	8	66.72	37 1-2*	41.70	
	66	30	19.80	45*	10.89	
12 oz. Gilt,	296	11	32.56			

THE LEWIS VOIGHT & SONS CO.

TICAL IN BOOK

Gossler & Wilt Wall Paper Co.—Cont.

	152	10	15.20	42 1-2*	27.46	
	424	12 1-2	53.00			
	26	13 1-2	3.51			
	150	15	22.50			
	190	16	30.40			
	304	18	54.72	50*	53.81	
	134	45	60.30			
	77	50	38.50			
	78	55	42.90	50*	70.85	
Emb. Gold,	112	12 1-2	14.00	45*	7.70	
	13	40	5.20	50*	2.60	
	192	12 1-2	24.00	37 1-2*	15.00	
	32	45	14.40	50*	7.20	
Ing. P.	950	12 1-2	118.75	30	83.13	
Ing. Ceil.	120	13 1-2	15.00	45*	8.25	
Ing. F.	42	60	25.20	55*	11.34	
						$723.29

March 8th (13th).

Ingrain,	122	12 1-2	15.25	30	10.68	
Blanks,	250	5 1-2	13.75	30*	9.63	
	1000	6	60.00	30*	42.00	
	600	7	42.00	35*	27.30	
	180	28	50.40	45*	27.72	
						$117.33

THIS PAGE BOUND VERT

Gossler & Wilt Wall Paper Co.—Cont.

March 18th.

Glimmer,	200	9	18.00	37 1-2*	11.25	
	64	35	22.40	45*	12.32	
12 oz. Gilt,	285	10	28.50	42 1-2*	16.39	
	47	40	18.80	50*	9.40	
Mica,	50	12 1-2	6.25	37 1-2*	3.91	
Ingrain,	600	25	150.00	30	105.00	
						$158.27

March 31st, 1899.

Blank,	200	6	12.00	30*	8.40	
	30	28	8.40			
12 oz. Gilt	130	12 1-2	16.25	45*	13.56	
	14	45	6.30	50*	3.15	
						$25.11

April 12th (13th).

Blks.	1806	5	90.30		
	400	5 1-2	22.00	30*	78.61
	112	15	16.80	40*	10.08
	12	18	2.16		
	24	22	5.28		

Gossler & Wilt Wall Paper Co.—Cont.

	6	28	1.68	45*	5.02	
	128	11	14.08	42 1-2*	8.10	
12 oz. Gold,	50	13 1-2	6.75	45*	3.71	
	178	15	26.70			
	18	50	9.00	50*	17.85	
Ing. Pl.	700	12 1-2	87.50	30*	61.25	
						$184.62

April 17th (18th).

	350	5	17.50	30*	12.25	
Blk.	650	5 1-2	35.75	30*	25.03	
	30	15	4.50	40*	2.70	
	148	22	32.56	45*	17.91	
	50	10	5.00			
12 oz. Gold,	30	11	3.30	42 1-2*	4.78	
12 oz. Gilt,	196	12 1-2	24.50	45*	13.48	
Mica Gr.	50	12 1-2	6.25	37 1-2*	3.91	
Ing. Ceil. Gr.	1563	12 1-2	195.37	45*	107.46	
Ing. Pln.	650	12 1-2	81.25	30	56.88	
Ing. F.	40	55	22.00			
12 oz. Gilt	12	40	4.80			
	28	45	12.60			
Mica Gr.	8	45	3.60	50*	21.50	
						$265.90

THIS PAGE BOUND VE

Gossler & Wilt Wall Paper Co.—Cont.

May 6th.

Ingrain,	400	12 1-2	50.00	30	35.00	
						$35.00

May 10th (11th).

12 oz. Gilt,	12	45	5.40	50*	2.70	
						$2.70

May 18th (11th).

Blanks,	300	5	15.00	30*	10.50	
	66	15	9.90	40*	5.94	
						$16.44

May 15th (16th).

12 oz. Gilt,	6	45	2.70	50*	1.35	
						$1.35

June 12th (15th).

Blanks,	388	5	19.40	30*	13.58	
	100	7	7.00	35*	4.55	
	32	15	4.80	40*	2.88	
	54	18	9.72			
	20	28	5.60	45*	8.43	

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Gossler & Wilt Wall Paper Co.—Cont.

12 oz. Gold,	97	11	10.67	42 1-2*	6.14	
	36	40	14.40			
	22	45	9.90			
	6	50	3.00	50*	13.65	
						$49.23
			June 23rd (27th).			
30" Ing.	160	12 1-2	20.00	30	14.00	
Total,						$11027.11

The Robert Graves Co.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.
			Nov. 28th, 1898.		
Whites,	166	5 1-2	9.13	25	6.85
Col. Bor.	12	15	1.80	35	1.17
Col. Bor.	124	28	34.72	40	20.84
Whites,	800	6 1-2	52.00	27 1-2	37.70

THIS PAGE BOUND VER

The Robert Graves Co.—Cont.

10 oz. Glim.	112	7 1-2	8.40	30	5.88	
Silk Stripe,	64	13 1-2	8.64	32 1-2	5.84	
	32	18	5.76	37 1-2	3.60	
Emb. Gold,	650	20	130.00			
	350	18	63.00			
Emb. Bor.	200	55	110.00	45	166.65	
12 oz. Gold,	80	13 1-2	10.80	40	6.48	
	42	11	4.62	37 1-2	2.89	
12 oz. Gold Bd.	18	45	8.10	45	4.46	
Var. tile	22	20	4.40	30	3.08	
						$206.44
			Dec. 7th.			
Whites,	500	7	35.00	30	24.50	
	300	6 1-2	19.50	27 1-2	14.14	
Col. Bor.	240	28	67.20	40	40.32	
Whites,	800	6 1-2	52.00	27 1-2	37.70	
	80	5 1-2	4.40	25	3.30	
Col. Bor.	8	15	1.20	35	.78	
Emb. Silk,	300	13 1-2	40.50	32 1-2	27.34	
						$148.08
			Dec. 8th.			
Emb. Gold,	750	20	150.00			

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The Robert Graves Co.—Cont.

	400	15	60.00	45	115.50	
Emb. Bord.	250	60	150.00	50	75.00	
						$190.50
			Dec. 19th.			
22' Emb. Gold.	700	18	126.00			
Emb. Bord.	150	55	82.50	45	114.68	
						$114.68
			Dec. 28th.			
Whites,	160	6	9.60	25	7.20	
Col. Bdr.	24	23	5.52			
12 oz. Gold,	950	13 1-2	128.25			
	520	12 1-2	65.00	40	119.26	
12 oz. Bord.	300	45	135.00			
12 oz. Bord.	28	45	12.60	45	81.18	
12 oz. Bord.	100	12 1-2	12.50	40	7.50	
12 oz. Bord.	36	10	3.60	37 1-2	2.25	
Emb. Gold,	150	18	27.00			
	50	15	7.50			
Emb. Bord.	32	55	17.60	45	28.66	
App. Ing.	30	1.25	37.50			
App. Ing.	40	1.25	50.00	50	43.75	
						$289.80

THIS PAGE BOUND VER

12—212

The Robert Graves Co.—Cont.

Dec. 31st.

Whites,	100	5 1-2	5.50	25	4.13	
Col. Bdr.	8	15	1.20	35	.78	
	16	28	4.48	40	2.68	
Whites,	60	6 1-2	3.90	27 1-2	2.83	
	50	7	3.50	30	2.45	
12 oz. Gold,	200	13 1-2	27.00	40	16.20	
12 oz. Gold,	136	11	14.96	37 1-2	9.35	
12 oz. Gold, Bord.	76	45	34.20			
12 oz. Gold,	100	16	16.00			
	50	15	7.50	45	31.74	
						$70.16

Dec. 31st, 1898, Cont.

10 oz. Gold,	86	10	8.60	37 1-2	5.38	
10 oz. Bord.	14	40	5.60			
Emb. Gold,	226	15	33.90	45	31.08	
Emb. Bord.	34	50	17.00			
						$36.46

Jan. 14, 1899.

12 oz. Gold,	600	12 1-2	75.00	40	45.00	
	200	10	20.00	37 1-2	12.50	

The Robert Graves Co.—Cont.

12 oz. Bord	132	45	59.40	45	32.67	
10 oz. Glim,	100	7 1-2	7.50	30	5.25	
						$95.42
			Jan. 17th.			
Emb. Silk,	282	18	50.76	37 1-2	31.73	
Emb. Silk,	172	16	27.52	35	17.89	
Emb. Bord.	108	50	54.00	45	29.70	
						$79.32
			Jan. 18th.			
Dry Mica,	850	11	93.50			
Dry Mica,	490	10	49.00	30	99.75	
Dry Bord.	216	35	75.60	40	45.36	
						$145.11
			Jan. 19th.			
Whites,	150	7	10.50	30	7.35	
	86	6 1-2	5.59	27 1-2	4.06	
Col. Bord.	36	28	10.08	40	6.05	
12 oz. Gold,	200	16	32.00	45	17.60	
12 oz. Gold,	136	11	14.96	37 1-2	9.35	
12 oz. Bord.	52	50	26.00	45	14.30	
						$58.71

THIS PAGE BOUND VE

The Robert Graves Co.—Cont.

Jan. 23rd.

Whites,	232	6	13.92	25	10.44	
Col. Bord.	36	28	10.08	40	6.05	
Dry Mica,	800	11	88.00			
Dry Mica,	500	10	50.00	30	96.60	
Dry Bord.	206	35	72.10	40	43.26	
10 oz. Glim.	50	8 1-2	4.25			
10 oz. Glim.	50	7 1-2	3.75	30	5.60	
10 oz. Bord.	14	30	4.20			
12 oz. Gold,	200	13 1-2	27.00			
12 oz. Gold,	180	12 1-2	22.50	40	32.22	
12 oz. Gold,	26	16	4.16			
12 oz. Bord.	4	50	2.00			
12 oz. Bord.	86	45	38.70	45	24.67	
						$218.84

Feb. 8th.

Emb. Gold,	200	20	40.00		
	220	18	39.60		
Emb. Bor.	120	55	66.00	45	80.08
10 oz. Glim.	66	10	6.60	32 1-2	4.46
10 oz. Bor.	14	30	4.20	40	2.52
10 oz. Glim.	100	11	11.00	32 1-2	7.43

The Robert Graves Co.—Cont.

12 oz. Gold,	30	11	3.30	37 1-2	2.07	
12 oz. Gold,	50	13 1-2	6.75	40	4.05	
12 oz. Gold Bor.	12	45	5.40	45	2.97	
						$103.58
			Feb. 20th.			
Emb. Silk,	24	18	4.32	37 1-2	2.70	
Emb. Silk,	24	16	3.84	35	2.50	
Emb. Bord.	24	50	12.00	45	6.60	
						$11.80
			Feb. 21, 1899.			
Whites,	460	6 1-2	29.90	27 1-2	21.68	
Dry Mica,	472	12 1-2	59.00	32 1-2	39.83	
	472	10	47.20	30	33.04	
	98	9	8.82	30	6.18	
10 oz. Glim.	324	9	29.16	32 1-2	19.68	
Emb. Silk,	150	15	22.50			
	400					
	364 Lot	16	122.24	35	94.08	
	650	18	117.00	37 1-2	73.13	
Emb. Silk Bor.	200	50	100.00			
	135	45	58.50			
Mica Bor.	126	40	50.40	45	114.90	

The Robert Graves Co.—Cont.

	36	35	12.60			
Glim. Bor.	54	30	16.20			
Color Bor.	86	28	24.08	40	31.73	
						$434.25
			March 2nd.			
Ingrain,	40	25	10.00	30	7.00	
22 oz. Flit Ingrain Ceil.	32	20	6.40	45	3.52	
Appliq. Frieze,	12	1.25	15.00	50	7.50	
22 oz. Flat,	26	20	5.20	37 1-2		
22 oz. Flat,	100	15	15.00	37 1-2	12.63	
Bord.	6	50	3.00			
Bord.	12	45	5.40			
Emb. Gold,	50	18	9.00			
Emb. Gold Bor.	60	55	33.00	45	27.72	
						$58.37
			March 9th.			
Emb. Gold,	250	15	37.50			
Emb. Gold,	250	20	50.00	45	48.13	
Emb. Bord.	106	60	63.60	50	31.80	
						$79.93
			March 22nd.			
Emb. Silk,	182	15	27.30	35	17.75	

The Robert Graves Co.—Cont.

	76	13 1-2	10.26	32 1-2	6.93	
	52	18	9.36	37 1-2	5.85	
Emb. Silk Bor.	22	45	9.90	45	5.45	
Emb. Silk Bor.	6	50	3.00	45	1.65	
Emb. Silk Bor.	6	45	2.70	45	1.49	
Ingrain,	50	12 1-2	6.25	30	4.38	
32 oz. Flit Ing. Cl.	32	20	6.40	45	3.52	
Applq. Frieze,	12	1.25	15.00	50	7.50	
						$54.52
			March 30th.			
Var. Tile,	400	20	80.00	30	56.00	
						$56.00
			March 31st.			
Emb. Silk,	400	18	72.00	37 1-2	45.00	
	250	16	40.00	35	26.00	
Emb. Bord.	100	50	50.00	45	27.50	
						$98.50
			April 3rd.			
Var. Tile,	400	20	80.00	30	56.00	
Varn. Bord.	30	50	15.00	45	8.25	
						$64.25

THIS PAGE BOUND VER

The Robert Graves Co.—Cont.

April 6th, 1899.

Emb. Silk,	100	13 1-2	13.50	32 1-2	9.12	
	200	18	36.00	37 1-2	9.12	
	260	16	41.60			
	170	15	25.50	35	43.62	
12 oz. Gold,	300	13 1-2	40.50			
	200	12 1-2	25.00	40	39.30	
	80	45	36.00	45	19.80	
						$134.34

April 11th.

12 oz. Gold,	50	13 1-2	6.75	40	4.05	
12 oz. Gold.	30	11	3.30	37 1-2	2.07	
						$6.12

April 12th.

Emb. Silk,	100	13 1-2	13.50	32 1-2	9.12	
						$9.12

April 13th.

22' Flit. Ing. Ceil.	32	25	8.00	45	4.40	
App. Frieze,	12	1.25	15.00	50	7.50	
						$11.90

TICAL IN BOOK

THE LEWIS VOIGHT & SONS CO.

The Robert Graves Co.—Cont.

			April 17th.			
Varn. Tile,	400	20	80.00	30	56.00	
Varn. Bord.	30	50	15.00	45	8.25	
						$64.25
			April 17th.			
Varn. Tile,	8	20	1.60	30	1.12	
						$1.12
			April 19th.			
Emb. Silk,	150	18	27.00	37 1-2	16.88	
	100	16	16.00	35	10.40	
						$27.28
			April 29th.			
22' Flit. Ing. Ceil.	10	25	2.50	45	1.38	
Appl. Frieze,	3	1.25	3.75	50	1.88	
						$3.26
			April 29th.			
22" Flit. Ing. Ceil.	16	25	4.00	45	2.20	
Appl. Frieze,	6	1.25	7.50	50	3.75	
						$5.95
Total,						$2937.06

THIS PAGE BOUND VERTIC

George Halbert.

	No. of		Amount.	Disct.	Net Amt.	
			Oct. 11th, 1898.			
White Blk.	2000	6				
	500	28	120.00	30	84.00	
	1000	5 1-2	140.00	45	77.00	
	2400	5 1-2	55.00			
	600	20	132.00	30	130.90	
	3600	5 1-2	120.00	45	66.00	
	600	20	198.00	30	138.60	
	1200	5	120.00	45	66.00	
			66.00	30	46.20	
						$608.70
Grade.	Rolls.	Price.	Sept. 29 (Oct. 11).			
12 oz. Flat,	800	10	80.00	37 1-2*	50.00	
	200	30	60.00	45*	33.00	
	00	10	40.00	37 1-2*	25.00	
						$108.00
			Oct. 26th.			
12 oz. Bronze,	1600	15	240.00	50*	120.00	
	450	50	225.00	50*	112.50	

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George Halbert.—Cont.

	850	13 1-2	114.75	45*	63.11	
Blanks,	2000	5 1-2	110.00	30*	77.00	
	250	18	45.00	45*	24.75	
	1000	5 1-2	55.00	30*	38.50	
12 oz. Flat.	200	10	20.00	37 1-2*	12.50	
	50	30	15.00	45*	8.25	
	100	10	10.00	37 1-2*	6.25	
	250	10	25.00	37 1-2*	15.63	
	64	35	22.40	45*	12.32	
	186	10	18.60	37 1-2*	11.63	
Blanks,	200	5 1-2	11.00	30*	7.70	
	12	15	1.80	40*	1.08	
	36	20	7.20	45*	3.96	
	80	5 1-2	4.40	30*	3.08	
12 oz. Bronze,	50	12 1-2	6.25	45*	3.44	
	12	45	5.40	50*	2.70	
	30	12 1-2	3.75	45*	2.06	
	50	15	7.50	50*	3.75	
	12	50	6.00	50*	3.00	
	30	13 1-2	4.05	45*	2.23	
						$535.44

Nov. 7th.

W. Blank,	3000	5 1-2	165.00	30*	115.50	

THIS PAGE BOUND VER

George Halbert.—Cont.

	250	18	45.00	45*	24.75	
	1400	6 1-2	91.00	32 1-2*	61.43	
	170	22	37.40	45*	20.57	
	700	5 1-2	38.50	30*	26.95	
10 oz. Brz.	600	7	42.00	35*	27.30	
	76	20	15.20	45*	8.36	
	489	7	33.60	35*	21.85	
	20	20	4.00	45*	2.20	
	112	7	7.84	35*	5.10	
						$314.01

Nov. 23rd, 1898.

12 oz. Flat,	312	10	31.20	37 1-2*	19.51	
	44	30	13.20	45*	7.26	
	8	35	2.80	45*	1.54	
	4	10	.40	37 1-2*	.24	
	1	30	.30	45*	.17	
	60	10	6.00	37 1-2*	3.75	
	10	30	3.00	45*	1.65	
10 oz. Bronze	800	7	56.00	35*	36.40	
	60	20	12.00	45*	6.60	
12 oz. Bronze,	100	12 1-2	12.50	45*	6.88	
	24	45	10.80	50*	5.40	
	32	10	3.20	42 1-2*	1.84	

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George Halbert.—Cont.

	30	12 1-2	3.75	45*	2.06	
						$93.30
			Nov. 29th.			
12 oz. Flat,	80	10	8.00	37 1-2*	5.01	
	14	35	4.90	45*	2.70	
Blanks,	650	5 1-2	35.75	30*	25.03	
10 oz. Brze.	420	7	22.40	35*	14.56	
	30	20	6.00	45*	3.30	
12 oz. Brze.	100	9	9.00	40*	5.40	
	12	30	3.60	45*	1.98	
	50	8	4.00	37 1-2*	2.50	
	28	15	4.20	50*		
	6	50	3.00	50*	3.60	
	14	13 1-2	1.89	45*	1.04	
	50	15	7.50			
	8	50	4.00	50*	5.75	
	26	13 1-2	3.51	45*	1.94	
Blanks,	1600	5 1-2	88.00	30*	61.60	
	126	18	22.68	45*	12.48	
14 oz. Emb. Brze.	28	10	2.80	42 1-2*	1.62	
						$148.51
			Dec. 8th.			
10 oz. Brze.	108	7	7.56	35*	4.92	

THIS PAGE BOUND VE

George Halbert.—Cont.

	14	20	2.80	45*	1.54	
	56	7	3.92	35*	2.55	
Whites,	22	15	3.30	40*	1.98	
16 oz. 30 in.	290	12 1-2	36.25	30*	25.38	
	50	60	30.00	55*	13.50	
	150	12 1-2	18.75	45*	10.32	
						$60.19

Dec. 15th, 1898.

12 oz. Brze.	1100	20	220.00	50*	110.00	
	610	60	194.40	55*	87.48	
	324	15	91.50			
	1372	18	246.96			
	390	55	214.50			
	890	15	133.50			
	44	50	22.00	50*	354.23	
	110	13 1-2	14.85	45*	8.17	
10 oz. Brze.	200	7	14.00	35*	9.10	
	24	20	4.80	45*	2.64	
	150	7	10.50	35*	3.83	
16 oz. 30 in.	200	12 1-2	25.00	30*	17.50	
12 oz. Brze.	12	50	6.00	50*	3.00	
Bronze,	400	5 1-2	22.00	30*	15.40	
	24	20	4.80	45*	2.64	

THE LEWIS VOIGHT & SONS CO.

RTICAL IN BOOK

George Halbert.—Cont.

	250	5 1-2	13.75	30*	9.63	
	6	15	.90	40*	.54	
14 oz. Emb. Silk,	350	15	52.50	40*	31.50	
	140	45	63.00	50*	31.50	
	200	13 1-2	27.00	37 1-2*	16.88	
						$707.04

Dec. 19th.

White Blk.	2000	5	110.00	30*	77.00	
	130	15	19.50	40*	11.70	
	1150	5 1-2	63.25	30*	44.28	
	326	20	65.20	45*	35.86	
16 oz. 30 in.	450	12 1-2	56.25	30	39.38	
	60	60	36.00	55*	16.20	
22 in. stock,	458	15	68.70	50*	34.35	
	50	12 1-2	6.25	30	4.38	
	10	60	6.00	55*	2.70	
						$265.85

Dec. 28th (23rd).

10 oz. Brze.	650	11	71.50	40*	42.90
	204	40	81.60	50*	40.80
	500	9	45.00	40*	27.00
12 oz. Flat,	100	10	10.00	37 1-2*	6.25

THIS PAGE BOUND VER

George Halbert.—Cont.

Blank,	300	5 1-2	16.50	30*	11.55	
	14	15	2.10	40*	1.26	
	230	5 1-2	12.65	30*	8.86	
	50	20	10.00	45*	5.50	
10 oz. Brze.	20	40	8.00	50*	4.00	
	50	9	4.50	40*	2.70	
12 oz. Brze.	100	12 1-2	12.50	45*	6.88	
	26	45	11.70	50*	5.85	
	170	12 1-2	21.25	45*	11.69	
	26	45	11.70	50*	5.85	
	70	12 1-2	8.75	45*	4.82	
10 oz. 30 in.	144	60	86.40	55*	38.88	
	400	12 1-2	50.00	30*	35.00	
	66	60	39.60	55*	17.82	
	250	12 1-2	31.25	45*	17.19	
						$294.80

Jan. 10th, 1899.

16 oz. 30 " in.	50	25	12.50	30	8.75	
	12	60	7.20	55*	3.24	
	50	12 1-2	6.25	45*	3.44	
	132	60	80.40	55*	36.18	
	206	12 1-2	25.75	30	18.03	
	54	60	32.40	55*	14.58	

RTICAL IN BOOK

George Halbert.—Cont.

	170	12 1-2	21.35	45*	11.69	
Blank,	2800	7 1-2	210.00	35*	136.50	
	692	30	207.60	45*	114.18	
	1600	6	96.00	30*	67.20	
10 oz. Brz.	300	7	21.00	35*	13.65	
	36	20	7.20	45*	3.96	
	150	7	10.50	35*	6.83	
Blanks,	20	28	5.60	45*	3.08	
	500	5 1-2	38.50	30*	26.95	
	76	18	13.68	45*	7.53	
	250	5 1-2	13.75	30*	9.63	
						$485.42

Jan. 14th.

Blank,	1600	5 1-2	88.00	30*	61.60
	124	18	22.32	45*	12.38
10 oz. Br.	200	7	14.00	35*	9.10
	24	20	4.80	45*	2.64
	102	7	7.14	35*	4.65
10 oz. 30 in.	200	12 1-2	25.00	30	17.50
12 oz. Flat,	30	30	9.00	45*	
10 oz. Broz.	30	20	6.00	45*	8.25
16 oz. 30 in.	56	12 1-2	7.00	30	4.90
	6	50	3.00	50*	1.50

THIS PAGE BOUND VER

George Halbert.—Cont.

10 oz. Brz.	550	7	38.50	35*	25.93	
	78	20	15.60	45*	8.58	
	356	7	24.92	35*	16.20	
16 oz. 30 in.	120	12 1-2	15.00	30	10.50	
	48	65 1-2	31.44	55*	14.15	
	50	12 1-2	6.25	45*	3.44	
	30	12 1-2	3.75	30	2.63	
						$202.95
			Jan. 18th.			
Blank,	2700	6 1-2	175.50	32 1-2*	118.47	
	366	22	80.52	45*	44.29	
	1600	5 1-2	88.00	30	61.60	
12 oz. Brz.	56	60	33.60	55*	15.12	
	94	15	14.10			
	60	55	33.00			
	110	15	16.50	50*	31.80	
						$271.28
			Jan. 20th.			
Blank,	900	5 1-2	49.50			
	200	6	12.00	30*	43.05	
	36	28	10.08	45*	5.54	
10 oz. Bze.	150	11	16.50	40*	9.90	

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THE LEWIS VOIGHT & SONS CO.

RTICAL IN BOOK

George Halbert.—Cont.

	12	40	4.80	50*	2.40	$60.89
			Feb. 4th, 1899.			
12 oz. Bze.	226	13 1-2	30.51	45*	16.79	
	54	45	24.30	50*	12.15	
	140	12 1-2	17.50			
	124	13 1-2	16.74	45*	18.83	
	32	45	14.40	50*	7.20	
	76	12 1-2	9.50	45*	5.23	
16 oz. 30 in.	50	25	12.50	30	8.75	
	14	65 1-2	9.17	55*	4.13	
	50	12 1-2	6.25	45*	3.44	
	50	12 1-2	6.25	30	4.38	
	12	65 1-2	7.86	55*	3.54	
	50	12 1-2	6.25	45*	3.44	$87.88
			Feb. 7th.			
Blank,	900	5 1-2	49.50	30*	34.65	
	68	18	12.24	45*	6.74	
	12	22	2.64	45*	1.46	
12 oz. Flat,	100	10	10.00	37 1-2*	6.25	
	10	35	3.50	45*	1.93	

THIS PAGE BOUND VE

George Halbert.—Cont.

Blank,	550	5 1-2	30.25	30*	21.18	
	14	30	4.20	45*	2.31	
	6	50	3.00	50*	1.50	
16 oz. 30 in.	24	25	6.00	30	4.20	
	12	65	7.80	55*	3.51	
	26	12 1-2	3.25	45*	1.79	
Blank,	100	5 1-2	5.50	30*	3.85	
	12	15	1.80	40*	1.08	
	50	5 1-2	2.75	30*	1.93	
						$92.38

Feb. 10th.

10 oz. Brz.	300	10	30.00	40*	18.00	
	82	40	32.80	50*	16.40	
	172	9	15.48	40*	9.29	
12 oz. Flat,	1150	10	115.00	37 1-2*	71.88	
	324	30	97.20	45*	53.46	
	736	10	73.60	37 1-2*	46.00	
22 oz. Silk,	250	30	75.00	42 1-2*	43.13	
	70	70	49.00	55*	22.05	
	150	15	22.50	40*	13.50	
	250	20	50.00	42 1-2*	28.75	
	70	50	35.00	50*	17.50	
	150	16	24.00	40*	14.40	

RTICAL IN BOOK

George Halbert.—Cont.

16 oz. 30 in. Ing.	64	12 1-2	8.00	30	5.60	
	6	65	3.90	55*	1.76	
	16	15	2.40	50*	1.20	
	650	12 1-2	81.25	30	56.88	
	88	50	44.00	50*	22.00	
	116	12 1-2	14.50	45*	7.98	
Blk.	8	15	1.20	40*	.72	
	38	5 1-2	2.09	30*	1.47	
12 Flat,	300	10	30.00	37 1-2*	18.75	
	74	35	25.90	45*	14.25	
	180	10	18.00	37 1-2*	11.25	
	150	6 1-2	9.75	32 1-2*	6.59	
	18	22	3.96	45*	2.18	
	80	5 1-2	4.40	30*	3.08	
						$508.07

Feb. 20th.

Blank,	300	6 1-2	19.50	32 1-2*	13.17	
	40	22	8.80	45*	4.84	
	200	5 1-2	11.00	30*	7.70	
12 oz. Flat,	200	10	20.00	37 1-2*	12.50	
	50	35	17.50	45*	9.63	
	120	10	12.00	37 1-2*	7.50	
10 oz. Brze.	50	10	5.00	40*	3.00	

THIS PAGE BOUND VER

George Halbert.—Cont.

	14	40	5.60	50*	2.80	
	36	9	3.24	40*	1.95	
16 oz. 30 in. Ing.	274	12 1-2	34.25	30	23.98	
	74	65	48.10	55*	21.65	
	224	12 1-2	28.00	45*	15.40	
	18	65	11.70	55*	5.27	
	50	15	7.50	50*	3.75	
	150	12 1-2	18.75	30	13.13	
	40	50	20.00	50*	10.00	
	130	12 1-2	16.25	45*	8.94	
						$165.21

Feb. 25th.

Emb. Silk,	20	45	9.00	50*	4.50	
	34	15	5.10	40*	3.06	
Bronze,	24	9	2.16	40*	1.30	
	6	35	2.10	45*	1.16	
	16	9	1.44			
	76	10	7.60	40*	5.43	
	18	40	7.20	50*	3.60	
	50	9	4.50			
	200	10	20.00	40*	14.70	
	48	40	19.20	50*	9.60	
	160	9	14.40	40*	8.64	

RTICAL IN BOOK

George Halbert.—Cont.

16 oz. 30 in. Ing.	1300	12 1-2	162.50	30	113.75	
						$165.74

March 3rd.

Blk.	600	5 1-2	33.00	30*	23.10
10 oz. Brz.	200	7	14.00	35*	9.10
12 oz. Flat,	100	10	10.00	37 1-2*	6.25
10 oz. Brze.	50	10	5.00	40*	3.00
16 oz. 30 in. Ing.	576	12 1-2	72.00	30	50.40
12 oz. Brz.	300	15	45.00	50*	22.50
22 oz. Silk,	50	30	15.00	42 1-2*	8.63
1 B. Bdr.	60	50	30.00	50*	15.00
	36	65	23.40		
	12	70	8.40	55*	14.31
2 Bd. Bdr.	24	20	4.80		
1 Bd. Bld. Bdr.	26	35	9.10	45*	7.65
	80	50	40.00	50*	20.00
2 Bd. Bld. Bdr.	6	35	2.10	45*	1.16
Ceil.	120	7	8.40	35*	5.46
Flat,	60	10	6.00	37 1-2*	3.75
10 oz. G.	26	10	2.60	40*	1.56
12 oz.	300	13 1-2	40.50	45*	22.28
22 oz. Silk,	30	15	4.50	40*	2.70
22 oz. Liq. Gold,	190	12 1-2	23.75		

THIS PAGE BOUND VER

George Halbert—Cont.

20 oz. Liq. Gilt,	112	12 1-2	14.00	45*	20.76	
						$237.61
			March 8th.			
14 oz. Emb. Silk,	50	15	7.50	40*	4.50	
Blank,	300	5 1-2	16.50	30*	11.35	
1 B. Bld. Bor.	12	45	5.40	50*	2.70	
2 Bld. Bor.	50	18	9.00	45*	4.95	
Emb. Silk,	30	12 1-2	4.05	37 1-2*	2.53	
Blank,	200	5 1-2	11.00	30*	7.70	
						$33.93
			March 16th.			
Blank,	750	6	45.00	30*	31.50	
1 B. Bld. Bor.	180	28	50.40	45*	27.72	
2 B. Bor.	20	15	3.00	40*	1.80	
Ceil.	420	5 1-2	23.10	30*	16.17	
						$77.19
			March 21st.			
16 oz. 30 in. Ing.	100	12 1-2	12.50	30	8.75	
12 oz. Flat,	100	10	10.00	37 1-2*	6.25	
12 oz. Brz.	350	11	38.50	42 1-2*	22.14	
2 B. Bdr.	66	45	29.70			

THE LEWIS VOIGHT & SONS CO.

TICAL IN BOOK

George Halbert—Cont.

1 B. Bld. Bdr.	130	40	52.00	50*	40.85	
1 B. Bdr.	24	30	7.20	45*	3.96	
	18	60	10.80	55*	4.86	
Ceil.	112	15	16.80	50*	8.40	
20 oz. Liq. Gold,	150	12 1-2	18.75	45*	10.31	
Flat Ceil.	60	10	6.00	37 1-2*	3.75	
12 oz. G.	230	10	23.00	42 1-2*	13.23	
						$122.50
			March 25th.			
2 B. Bor.	24	15	3.60	40*	2.16	
16 oz. 30 in. Ing.	100	12 1-2	12.50	30	8.75	
1 B. Bor.	24	65	15.60	55*	7.02	
20 oz. Gold,	50	12 1-2	6.25	45*	3.44	
						$21.37
			March 31st.			
12 oz. Flat,	400	10	40.00	37 1-2*	25.00	
16 oz. 30 in. Ing.	300	12 1-2	37.50	30	26.25	
Emb. Silk,	350	15	52.50	40*	31.50	
22 oz. Silk,	60	20	12.00	42 1-2*	6.90	
12 oz. Brze.	150	20	30.00	50*	15.00	
1 B. Bor.	50	30	15.00	45*	8.25	
Ceil.	200	10	20.00	37 1-2*	12.50	

THIS PAGE BOUND VER

George Halbert—Cont.

20 oz. Gold,	150	12 1-2	18.75			
Ceil.	150	13 1-2	20.25	45*	21.45	
	30	16	4.80	40*	2.88	
						$149.73
			April 5th.			
16 oz. 30 in. Ing.	50	12 1-2	6.25	30	4.38	
1 B. Bor.	172	20	34.40	45*	18.92	
	32	65	20.80	55*	9.36	
20 oz. Gold,	50	12 1-2	6.25	45*	3.44	
22 Gold, nar. print,	24	15	3.60	50*	1.80	
						$37.90
			April 10th.			
Blk.	1100	5 1-2	60.50			
	100	6	6.00	30	46.55	
10 Brz.	200	7	14.00			
Blk.	100	7 1-2	7.50	35*	13.98	
12 oz. Flat,	100	10	10.00	37 1-2*	6.25	
16 oz. 30 in. Ing.	50	12 1-2	6.25	30	4.38	
2 B. Bdr.	150	15	22.50	40*	13.50	
	24	20	4.80			
2 B. Bld. Bd.	50	22	11.00			
1 B. Bld. Bdr.	40	28	11.20	45*	14.85	

ICAL IN BOOK

George Halbert —Cont.

	6	40	2.40	50*	1.20	
Ceil.	150	5 1-2	8.25	30*	5.78	
	36	7	2.52	35*	1.64	
20 oz. Liq. Gt.	18	12 1-2	2.25	45*	1.24	
12 oz. Gold,	150	15	22.50	50*	11.25	
						$120.62
			April 18th.			
10 oz. Brze.	150	11	16.50			
Ceil.	100	9	9.00	40*	15.30	
						$15.30
			April 27th.			
Blank,	750	5 1-2	41.25	30*	28.88	
22 B. Bld. Bord.	50	18	9.00	45*	4.95	
Ceil.	400	5 1-2	22.00	30*	15.40	
						$49.23
			May 3rd.			
1 B. Bord.	4	65	2.60	55*	1.17	
22 Liq. Gold, Nar. Print,	4	15	.60	50*	.30	
						$1.47
			May 17th.			
Blank,	300	6 1-2	19.50	32 1-2*	13.17	
Ceil.	200	5 1-2	11.00	30*	7.70	

THIS PAGE BOUND VERT

George Halbert —Cont.

16 oz. 30 in. Ing.	300	12	37.50	30	26.25	
						$47.12
			May 27th.			
Blank,	2000	6 1-2	130.00	32 1-2*	87.75	
2 B. Bld. Bor.	280	22	61.60	45*	33.88	
Ceil.	1000	5 1-2	55.00	30*	38.50	
						$160.13
			June 7th.			
12 oz. Flat,	100	10	10.00	37 1-2*	6.25	
Blank Ceil.	400	5 1-2	22.00	30*	15.40	
Blank B. Bld. Bor.	18	28	5.04			
	6	30	1.80			
10 oz. Brz. 2 B. Bor.	6	20	1.20	45*	4.42	
12 oz. Brze.	100	18	18.00			
22 oz. Silk, 1 B. Bor.	6	50	3.00			
12 oz. Brz., 1 B. Bld. Bor.	12	45	5.40	50*	13.20	
						$39.27
			June 20th.			
Blank,	3000	5 1-2	165.00	30*	115.50	
2 B. Bd. Bor.	380	18	68.40	45*	37.62	
Ceil.	1800	5 1-2	99.00	30*	69.30	

THE LEWIS VOIGHT & SONS CO.

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George Halbert —Cont.

Blank,	5000	6 1-2	325.00	32*	219.38	
2 B. Bld. Bdr.	630	22	138.60	45*	76.23	
Ceil.	1200	5 1-2	66.00			
	2100	6	126.00	30*	134.40	
10 oz. Br.	1000	7	70.00	35*	45.50	
2 B. Bord.	130	20	26.00	45*	14.30	
Ceil.	600	7	42.00	35*	27.30	
Blk.	1290	6 1-2	83.85	32 1-2*	56.60	
1 B. Bd. Bdr.	312	28	87.36	45*	48.05	
1 Ceil.	450	6	27.00	30*	18.90	
						$863.08
Total,						$7152.11

Robert S. Hobbs & Co.

Grade.	No. of Rolls.	Price.	Amount.	Diset.	Net Amt.
			Nov. 2, 1898.		
12 oz. Gold,	300	16	48.00		

THIS PAGE BOUND VE

Robert S. Hobbs & Co.—Cont.

12 oz. Gold,	84	50	42.00	45	49.50	
12 oz. Gold,	250	12 1-2	31.25	40	18.75	
Emb. Gold,	550	13 1-2	74.25	40	44.55	
Emb. Gold,	170	50	85.00	45	46.75	
Emb. Gold,	350	13 1-2	47.25	40	28.35	
						$187.90
			Nov. 3rd.			
Whites,	2	23	46	40	.28	
						$ .28
			Nov. 17th.			
White,	1000	6	60.00	25	45.00	
Whites,	120	22	26.40	40	15.84	
Whites,	600	5 1-2	33.00	25	24.75	
Whites,	50	5 1-2	2.75	25	2.06	
	6	18	1.08	40	.65	
						$88.30
			Nov. 29th.			
Emb. Metals,	1000	23	230.00	45	126.50	
Emb. Metals,	300	65	195.00	50	97.50	
Emb. Metals,	550	18	99.00	45	54.45	
						$278.45

THE LEWIS VOIGHT & SONS CO.

TICAL IN BOOK

Dec. 2nd.

10 oz. Gold,	100	9	9.00	35	5.85	
10 oz. B. Gold,	26	30	7.80	40	4.68	
10 oz. C.	66	9	5.94	35	3.87	
Whites B.	650	23	149.50	40	89.70	
Whites S.	50	7	3.50	30	2.45	
Whites B.	14	23	3.22	40	1.94	
Whites C.	40	6	2.40	25	1.80	
						$110.29

Dec. 7th.

Whites S.	50	7	3.50	30	2.45	
Whites B.	14	23	3.22	40	1.94	
Whites C.	30	6	1.80	25	1.35	
Whites S.	1000	6 1-2	65.00	27 1-2	47.13	
Whites B.	120	18	21.60	40	12.96	
Whites C.	600	5 1-2	33.00	25	24.75	
10 oz. Golds,	32	10	3.20	35	2.08	
10 oz. B.	10	35	3.50	40	2.10	
10 oz. C.	24	9	2.16	35	1.41	
						$96.17

Dec. 10th.

Emb. Metal S.	800	20	160.00			

THIS PAGE BOUND VERT

Robert S. Hobbs & Co.—Cont.

Emb. B.	250	55	137.50			
Emb. C.	454	15	68.10	45	201.08	
Whites S.	200	6 1-2	13.00	27 1-2	9.43	
Whites B.	24	18	4.32	40	2.60	
Whites C.	80	5 1-2	4.40	25	3.30	
Whites S.	1000	6 1-2	65.00	27 1-2	47.13	
Whites B.	124	18	22.32	40	13.40	
Whites C.	500	5 1-2	27.50	25	20.63	
						$297.57
			Dec. 15th.			
10 oz. Gold S.	200	9	18.00	35	11.70	
10 oz. B	50	35	17.50	40	10.50	
10 oz. C.	100	9	9.00	35	5.85	
Emb. Gold S.	550	15	82.50	45	45.38	
Emb. Gold B.	170	45	76.50	45	42.08	
Emb. Gold C.	352	13 1-2	47.52	40	28.51	
						$144.02
			Dec. 21st.			
Emb. Gold S.	800	22	176.00	45	96.80	
Gold B.	250	60	150.00	50	75.00	
Gold C.	448	18	80.84	45	44.36	
						$216.16

THE LEWIS VOIGHT & SONS CO.

Robert S. Hobbs & Co.—Cont.

Dec. 29th.

10 oz. Gold,	200	10	20.00			
10 oz. B.	100	9	9.00	35	18.85	
10 oz. B.	50	35	17.50	40	10.50	
Emb. Gold,	650	20	130.00			
Emb. C.	350	16	56.00	45	102.30	
Emb. B.	200	60	120.00	50	60.00	
12 oz. Gold,	200	16	32.00	45	17.60	
12 oz. C.	100	12 1-2	12.50	40	7.50	
12 oz. B.	50	50	25.00	45	13.75	
						$230.50

Jan. 7th, 1900.

Emb. Gold,	14	50	7.00			
Emb. C.	30	16	4.80			
Emb. S.	24	16	3.84			
Emb. B.	6	50	3.00			
Emb. C.	16	16	2.56	45	11.66	
Emb. S.	50	13 1-2	6.75	40	4.05	
Emb. B.	14	40	5.60	45	3.08	
Emb. C.	36	12 1-2	4.50			
Emb. S.	12	13 1-2	1.62	40	3.68	
Emb. B.	3	40	1.20	45	.66	

THIS PAGE BOUND VER

Robert S. Hobbs & Co.—Cont.

Emb. C.	8	12 1-2	1.00	40	.60	
12 oz. Glim,	12	10	1.20	32 1-2	.81	
12 oz. B.	2 1-2	35	.87	40	.53	
12 oz. C.	6	9	.54	32 1-2	.37	
						$25.44
			Jan. 13th.			
12 oz. Gold, S.	272	15	40.80	45	22.44	
12 oz. C.	116	11	12.76	37 1-2	7.98	
12 oz. B.	68	45	30.60	45	16.83	
Emb. Gold,	76	13 1-2	10.26			
Emb. C.	46	13 1-2	6.21	40	9.88	
Emb. B.	20	45	9.00	45	4.95	
						$62.08
			Jan. 18th.			
10 oz. Glim.	150	7 1-2	11.25	30	7.88	
10 oz. B.	36	30	10.80	40	6.48	
10 oz. C.	112	7 1-2	8.40			
10 oz. S.	50	7 1-2	3.75	30	8.51	
10 oz. B.	14	30	4.20	40	2.52	
10 oz. C.	26	7 1-2	1.95	30	1.37	
10 oz. S.	150	9	13.50	32 1-2	9.12	
10 oz. B.	38	30	11.40	40	6.84	

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THE LEWIS VOIGHT & SONS CO.

Robert S. Hobbs & Co.—Cont.

10 oz. C.	80	7 1-2	6.00	30	4.20	
12 oz. Gold,	210	12 1-2	26.25	40	15.75	
12 oz. B.	48	45	21.60	45	11.88	
12 oz. C.	100	10	10.00	37 1-2	6.25	
Emb. Gold,	150	13 1-2	20.25	40	12.15	
Emb. B.	36	50	18.00	45	9.90	
Emb. C.	100	13 1-2	13.50	40	8.10	
						$110.95

Jan. 21st.

10 oz. Glim,	50	9	4.50	32 1-2	3.04	
10 oz. B.	12	25	3.00	40	1.80	
10 oz. C.	30	7 1-2	2.25	30	1.58	
10 oz. S.	100	9	9.00	32 1-2	6.08	
10 oz. B.	24	30	7.20	40	4.32	
10 oz. C.	80	7 1-2	6.00	30	4.20	
12 oz. Glim,	100	10	10.00	32 1-2	6.75	
12 oz. B.	24	35	8.40	40	5.04	
12 oz. C.	62	9	5.58	32 1-2	3.77	
12 oz. S.	150	11	16.50	32 1-2	11.14	
12 oz. B.	38	35	13.30	40	7.98	
12 oz. C.	112	9	10.08	32 1-2	6.81	
						$62.51

Jan. 30th.

White,	550	5 1-2	30.25			

THIS PAGE BOUND VER

Robert S. Hobbs & Co.—Cont.

	372	5 1-2	20.46	25	38.03	
	108	20	21.60	40	12.96	
	8	15	1.20	35	.78	
Emb. Gold	50	15	7.50	45	4.13	
	30	13 1-2	4.05	40	2.43	
	12	45	5.40	45	2.97	
	51	13 1-2	6.88	40	4.13	
	76	45	34.20	45	18.81	
	86	16	13.76	45	7.57	
	74	60	44.40	50	22.20	
Emb. Metal,	100	15	15.00			
	56	55	30.80			
	157	23	36.11			
	210	18	37.80	45	65.85	
	80	65	52.00	50	26.00	
						$205.86

Feb. 7th.

Flats S.	50	10	5.00	32 1-2	3.38	
Flats B.	10	35	3.50	40	2.10	
Flats C.	26	10	2.60	32 1-2	1.76	
Emb. Gold S.	24	13 1-2	3.24	40	1.95	
Emb. B.	5	45	2.25	45	1.24	
Emb. C.	16	13 1-2	2.16	40	1.30	

Robert S. Hobbs & Co.—Cont.

Emb. S.	56	60	33.60	50	16.80	
Emb. C.	101	18	18.18	45	10.00	
Whites S.	50	7	3.50	30	2.45	
Whites B.	12	23	2.76	40	1.66	
Whites C.	32	6	1.92	25	1.44	
						$44.08
			Feb. 10th.			
12 oz. Gold S.	100	16	16.00			
12 oz. B.	16	50	8.00	45	13.20	
						$13.20
			March 7th.			
10 oz. Glim, S.	4	7 1-2	.30	30	.21	
Emb. Gold,	80	50	40.00	45	22.00	
Emb. C.	50	13 1-2	6.75			
Emb. C.	301	13 1-2	40.64	40	28.44	
						$50.65
			March 10th.			
Flats S.	160	10	16.00	32 1-2	10.80	
Flats B.	46	30	13.80	40	8.28	
Flats C.	116	10	11.60	32 1-2	7.83	
						$26.91

THIS PAGE BOUND VER

Robert S. Hobbs & Co.—Cont.

March 23rd.

Whites,	604	23	138.92	40	83.36	$83.36

March 30th.

Emb. Gold,	196	22	43.12			
Emb. C.	200	18	36.00	45	43.52	
Emb. B.	60	60	36.00	50	18.00	$61.52

April 8th.

Emb. Gold,	538	15	80.70	45	44.39	
Emb. C.	356	13 1-2	48.06	40	28.84	
Emb. B.	150	45	67.50			
12 oz. Gold,	150	16	24.00	45	50.33	
12 oz. C.	100	12 1-2	12.50	40	7.50	
12 oz. B.	36	50	18.00	45	9.90	$140.96

April 28th.

Whites B.	6	18	1.08	40	.65	
12 oz. Gold C.	50	11	5.50	37 1-2	3.44	
Emb. Gold,	18	60	10.80	50	5.40	$9.49

THE LEWIS VOIGHT & SONS CO.

TICAL IN BOOK

Robert S. Hobbs & Co.—Cont.

May 10th.

Tap. Flat,	2	10	.20	32 1-2	.14	$ .14

June 8th.

Whites B.	6	22	1.32	40	.79	
12 oz. G. D. C.	26	11	2.86	37 1-2	1.79	
Emb. Gd. B.	12	60	7.20	50	3.60	
						$6.18
Total,						$2552.97

Haefer, Meinken & Baeck Co.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.

Nov. 18th, 1898.

Wht. Blnk.	450	5 1-2	24.75	30*	17.33
Col. Bdr.	48	15	7.20	40*	4.32

THIS PAGE BOUND VERT

Haefer, Meinken & Baeck Co.—Cont.

Gold,	650	18	117.00	50*	58.50	
	350	12 1-2	43.75	45*	24.07	
	32	11	3.52	42 1-2*	2.03	
Gold Bord.	12	40	4.80			
	250	55	137.50	50*	71.15	
						$177.40
			Nov. 30th.			
Wht. Blk.	500	5 1-2	27.50	30*	19.25	
	1022	6 1-2	66.43	32 1-2*	44.84	
12 oz. Flat,	68	10	6.80	37 1-2*	4.25	
12 oz. Gold,	750	11	82.50	42 1-2*	47.44	
	470	10	47.00	42 1-2*	27.03	
Col. Bdr.	34	15	5.10	40*	3.06	
	158	28	44.24	45*	24.33	
Flat Bdr.	11	30	3.30	45*	1.82	
Gold Bdr.	190	40	76.00	50*	38.00	
						$210.02
			Dec. 7th.			
Wht. Blk.	1500	7 1-2	112.50	35*	73.13	
	900	6 1-2	58.50	32 1-2*	39.49	
Col. Bor.	380	28	106.40	45*	58.52	
						$171.14

Haefer, Meinken & Baeck Co.—Cont.

Dec. 28th.

Wht. Blk.	250	5 1-2	13.75	30*	9.63	
12 oz. Gold,	2370	10	237.00			
	80	11	8.80	42 1-2*	141.34	
	880	9	79.20	35*	51.48	
	800	12 1-2	100.00	45*	55.00	
	150	18	27.00	50*	13.50	
Col. Bdr.	20	15	3.00	40*	1.80	
Gold Bdr.	56	55	30.80	50*	15.40	
	472	40	188.80			
	400	45	180.00	50*	184.40	
						$472.55

Dec. 29th.

12 oz. Gold,	850	12 1-2	106.25	45*	58.46	
						$58.46

Jan. 4th, 1899.

White Blks.	1900	7	133.00	35*	86.45	
	1076	6	64.56			
	3750	5 1-2	206.25	30*	189.57	
Col. Bord.	294	15	41.10	40*	26.46	
	454	28	127.12	45*	69.92	
						$372.40

THIS PAGE BOUND VER

Haefer, Meinken & Baeck Co.—Cont.

			Jan. 12th.			
W. Blk.	2558	5 1-2	140.69	30*	98.49	
	300	7 1-2	22.50	35*	14.63	
	200	6 1-2	13.00	32 1-2*	8.78	
Col. Bdr.	146	15	21.90	40*	13.14	
	72	20	14.40			
	80	28	22.40	45*	20.24	
						$155.28
			Jan. 21st.			
Wht. Blk.	3636	5 1-2	199.98	30*	139.99	
	1202	6 1-2	78.13	32 1-2*	52.74	
	272	15	40.80	40*	24.48	
	184	23	42.32	45*	23.28	
						$240.49
			Jan. 26th.			
12 oz. Gold,	200	11	22.00			
	120	10	12.00	42 1-2*	19.55	
Gla. Bdr.	68	40	27.20	50*	13.60	
						$33.15
			Feb. 10th.			
Gold Bord.	21	41	8.40	50*	4.20	
						$4.20

Haefer, Meinken & Baeck Co.—Cont.

Feb. 21st.

Wht. Blks.	200	7 1-2	15.00	35*	9.75	
	171	6 1-2	11.12	32 1-2*	7.51	
Bordr.	50	28	14.00	45*	7.70	
12 oz. Gilt,	306	40	122.40			
	10	40	4.00	50*	63.20	
						$88.16

March 3rd.

Wht. Blank,	50	7	3.50	35*	2.28	
Col. Bord.	4	28	1.12	45*	.62	
						$2.90

March 18th.

9 oz. Blank,	120	5 1-2	6.60			
	20	6	1.20	30*	5.46	
	90	6 1-2	5.85	32 1-2*	3.95	
10 oz. Blank,	100	7 1-2	7.50	35*	4.88	
10 oz. Gilt,	200	10	22.00			
	120	10	12.00	40*	20.40	
1 B. B. Bor.	64	28	17.92	45*	9.86	
	50	40	20.00	50*	10.00	
						$54.55

THIS PAGE BOUND VERT

TICAL IN BOOK

Haefer, Meinken & Baeck Co.—Cont.

April 14th.

10 oz. Gilt,	50	11	5.50	40*	3.30	
1 B. B. Bord.	10	40	4.00	50*	2.00	
	8	28	2.24	45*	1.24	
2 B. B. Bord.	16	15	2.40	40*	1.44	
						$7.98
Total,						$2048.68

Howell & Bros.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
			Nov. 4th, 1898.			
Brown Blks.	5200	4	208.00	20	166.40	
	578	15	86.70	35	56.36	
	400	10	40.00	37 1-2	25.00	
						$247.76
			Nov. 10th.			
Wht. Blks.	600	5	30.00	25	22.50	
						$22.50

Howell & Bros.—Cont.

			Nov. 30th.			
Brn. Blks.	6600	4	264.00	20	211.20	
Br. Blk. Bd.	752	15	112.80	35	73.32	
Wht. Blk.	50	5	2.50	25	1.88	
12 oz. Bze.	50	10	5.00	37 1-2	3.13	
						$289.53
			Dec. 8th.			
Br. Blanks,	1650	4	66.00	20	52.80	
Br. Blk. Bdrs.	216	15	32.40	35	21.06	
						$73.86
			Dec. 15th.			
Br. Blks.	10050	4	402.00	20	321.60	
Br. Blk. Brds.	1288	15	193.20	35	125.88	
						$447.18
			Dec. 30th.			
Br. Blks.	750	4	30.00	20	24.00	
Br. Blk. Bdrs.	96	15	14.40	35	9.36	
						$33.36
			Jan. 10th, 1899.			
Br. Blk.	600	4	24.00	20	19.20	

THIS PAGE BOUND VERT

Howell & Bros.—Cont.

Br. Blk. Bdr.	80	15	12.00	35	7.80	
						$27.00
			Jan. 23rd.			
Br. Blk.	600	4	24.00	20	19.20	
Br. Bdr.	80	15	12.00	35	7.80	
						$27.00
			Feb. 3rd.			
Br. Blks.	2185	4	87.40	20	69.92	
	144	15	21.60	35	14.04	
						$83.96
			April 29th.			
Wht. Blks.	8264	5 1-2	454.52	25	340.89	
	11850	6 1-2	770.25	27 1-2	558.43	
Wht. Blk. Bd.	650	23	149.50			
	554	20	110.80	40	264.18	
	1000	18	180.00			
						$1163.50
Total,						$2415.65

THE LEWIS VOIGHT & SONS CO.

Janeway & Carpenter.

Jan. 24th, 1899.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
Tile,	300	20	60.00	30	42.00	
Tile Bord.	14	50	7.00	45	3.85	
	300	20	60.00	30	42.00	
Tile Bord.	20	50	10.00	45	5.50	
	112	20	22.40	30	15.68	
Tile Bord.	2	50	1.00	45	.55	
	32	20	6.40	30	4.48	
Tile Bord.	4	50	2.00	45	1.10	
	36	20	7.20	30	5.04	
Tile Bord.	4	50	2.00	45	1.10	
						$121.30

March 4th.

V. Tile,	100	20	20.00	30	14.00	
Bord.	12	50	6.00	45	3.30	
	50	20	10.00	30	7.00	
Bord.	26	50	13.00	45	7.15	
	150	20	30.00	30	21.00	
Bord.	10	50	5.00	40	2.75	
						$55.20

THIS PAGE BOUND VERT

Janeway & Carpenter.—Cont.

April 1st.

V. Tile,	50	20	10.00	30	7.00	$7.00
Total,						$183.50

Johnstown Wall Paper Company.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
			Nov. 3, 1898.			
	4100	4 1-2	184.50	27 1-2*	133.76	
	240	15	36.00	40*	21.60	$155.36
			Nov. 12th.			
	6000	4 1-2	270.00	27 1-2*	195.75	
	500	15	75.00	40*	45.00	$240.75

THE LEWIS VOIGHT & SONS CO.

Johnstown Wall Paper Company.—Cont.

Dec. 3rd.

14150	4 1-2	636.75	27 1-2*	461.64	
934	15	140.10	40*	84.06	
11750	5 1-2	646.25			
5500	6	330.00	30*	683.38	
850	25	212.50			
486	28	136.08			
860	28	240.80	45*	324.16	
					$1553.24

Dec. 20th.

26300	5	1315.00	30*	920.50	
2490	15	373.50	40*	224.10	
6828	5 1-2	375.54	30*	262.88	
360	20	72.00			
600	25	150.00	45*	122.10	
31.00	11	341.00	42 1-2*	196.08	
650	40	260.00	50*	130.00	
3460	5	173.00	30*	121.10	
					$1976.76

Dec. 23rd.

11550	4 1-2	519.75	27 1-2*	376.82	

THIS PAGE BOUND VERT

Johnstown Wall Paper Company.—Cont.

	12570	5	628.50	30*	439.95	
	10380	5 1-2	570.90			
	2200	6	132.00	30*	492.03	
	1726	10	172.60	42 1-2*	99.25	
	300	13 1-2	40.50	45*	22.28	
	176	11	19.36			
	850	11	93.50			
	500	10	50.00			
	162	11	17.82	42 1-2*	103.89	
	1284	15	192.60			
	512	20	102.40			
	810	25	202.50			
	550	28	154.00			
	696	40	278.40	50*	464.95	
						$1999.17
			Jan. 9, 1899.			
Blank,	1500	5	75.00	30*	52.50	
	26	15	3.90	40*	2.34	
	640	5 1-2	35.20	30*	24.64	
	98	20	19.60	45*	10.78	
						$90.26
			Jan. 24th.			
Blank.	3300	5 1-2	181.50	30*	127.05	

227 Johnstown Wall Paper Company.—Cont.

	330	4 1-2	14.85	27 1-2*	10.77	
	350	5	17.50	30*	12.25	
	900	11	99.00			
10 oz. Gold,	626	9	56.34			
	378	15	56.70	40*	127.23	
Bdr.	230	5	11.50	30*	8.05	
	222	40	88.80	50*	44.40	
Bdr.						$329.75
			Jan. 26.			
	200	6	12.00			
	81	5 1-2	4.46	30*	11.52	
	100	10	10.00	42 1-2*	5.75	
	50	28	14.00	45*	7.70	
	32	40	12.80	50*	6.40	
						$31.37
			Feb. 8th.			
	5250	4 1-2	236.25	27 1-2*	171.29	
Blank,	92	15	13.80	40*	8.28	
	100	5	5.00			
	800	5 1-2	44.00			
	50	5	2.50			
	50	5 1-2	2.75			

THIS PAGE FOUND WEST

Johnstown Wall Paper Company.—Cont.

	120	5 1-2	6.60			
	450	5 1-2	24.75	30*	59.92	
	12	15	1.80	40*	1.08	
	258	25	64.50	45*	35.48	
10 oz.	128	11	14.08	40*	8.45	
1 B. Blend.	14	40	5.60	50*	2.80	
12 oz.	50	11	5.50			
	914	10	91.40	42 1-2*	55.72	
1 B. Border,	134	40	53.60	50*	26.80	
						$369.82
			Feb. 28th.			
	200	6	12.00			
	150	5 1-2	8.25	35*	14.18	
	50	28	14.00	45*	7.70	
						$21.88
			Feb. 28th.			
	14800	5	740.00			
	17600	5 1-2	968.00	30*	1195.60	
	2540	15	381.00	40*	228.60	
						$1424.20
			March 15th.			
Emb.	26	12 1-2	3.25	45*	1.79	

Johnstown Wall Paper Co.—Cont.

	14	10	1.40	42 1-2*	.81	
	6	45	2.70	50*		
Bord.	68	45	30.60	50*	16.65	
	12	15	1.80	35*	1.08	
	100	5 1-2	5.50	30*	3.85	
						$24.18
			March 15th.			
	2350	5	117.50	30*	82.25	
						$82.25
			March 24th.			
	8600	5	430.00	30*	301.00	
	636	15	95.40	40*	57.24	
						$358.24
			March 30th.			
White,	400	6	24.00			
	1450	5 1-2	79.75	30*	72.63	
	6100	4 1-2	274.50	27 1-2*	199.01	
10 oz. Gold,	50	8	4.00	37 1-2*	2.50	
12 oz. Gold,	100	10	10.00	42 1-2*	5.75	
White,	6050	5	302.50	30*	211.75	
	824	15	123.60	40*	74.16	

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Johnstown Wall Paper Co.—Cont.

348	20	69.60			
100	28	28.00	45*	53.68	
14	40	5.60	50*	2.80	
					$622.28

March 30th, 1899.

2391	5	119.55	30*	83.69	
					$83.69

April 14th.

464	6	27.84			
3522	5 1-2	193.71	30*	155.09	
100	28	28.09			
12	25	3.00			
500	25	125.00	45*	85.80	
40	40	16.00	50*	8.00	
84	15	12.60	40*	7.56	
					$256.45

May 15th.

38200	4 1-2	1719.00	27 1-2*	1246.28	
3450	15	517.50	40*	310.50	
					$1556.78

July 28th (12/17/98).

400	5	20.00	30*	14.00	

THE LEWIS VOIGHT & SONS CO.

TICAL IN BOOK

Johnstown Wall Paper Co.—Cont.

129	15	19.35	35*	11.61	$25.61

July 28th (12/19/98).

71	15	10.65	40*	6.39	$6.39

July 28th (12/22/98).

192	5	9.60			
200	5 1-2	11.00	30*	14.42	
100	15	15.00	40*	9.00	
100	20	20.00	45*	11.00	
					$34.42
Total,					$11,242.85

Keystone Wall Paper Company.

Nov. 7, 1898.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.
Browns,	2000 2996	4	199.84	20	159.87

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Keystone Wall Paper Company—Cont.

2 B. Bor.	550	15	82.50	35	53.63	
W. Blank,	2400	5 1-2	132.00	25	99.00	
2 B. Bor.	350	15	52.50	35	34.13	
Ceiling,	1250	5 1-2	68.75	25	51.56	
W. Blank,	4000	6	240.00	25	180.00	
	4000	6 1-2	260.00	27 1-2	188.50	
1 B. Bor.	2100	23	483.00	40	289.80	
Ceiling,	4200	5 1-2	231.00	25	173.25	
10 oz. Glim,	2800	7 1-2	210.00	30	147.00	
1 B. B. Bor.	700	30	210.00	40	126.00	
Ceiling,	1500	7 1-2	112.50	30	78.75	
10 oz. Brze.	1600	8	128.00	32 1-2	86.40	
1 B. Bor.	450	30	135.00	40	81.00	
Ceiling,	900	8	72.00	32 1-2	48.60	
12 oz. Bze.	1600	11	176.00	37 1-2	110.00	
1 B. Bor.	450	35	157.50	40	94.50	
Ceiling,	896	11	98.56	37 1-2	61.60	
Emb. Side	2000	11	220.00	37 1-2	137.50	
2 B. Bor.	526	30	157.80	40	94.68	
Ceiling,	1100	11	121.00	37 1-2	75.63	
						$2371.40

Nov. 15th.

Brn. Blk.	2200	4	88.00	20	70.40	
2 Bd. Bdr.	252	15	37.80	35	24.57	

Keystone Wall Paper Company—Cont.

Wht. Blk.	50	6	3.00			
	500	5 1-2	27.50	25	22.88	
	50	7 1-2	3.75	30	2.63	
2 Ban. Bor.	8	18	1.44	40	.86	
	60	15	9.00	35	5.85	
1 Band. Bdr.	12	25	3.00	40	1.80	
Ceil.	290	5 1-2	15.95	25	11.96	
	32	6	1.92	25	1.44	
10 oz. Glim,	1100	7 1-2	82.50	30	57.75	
1 B. Bdr.	250	30	75.00	40	45.00	
Ceil.	600	7 1-2	45.00	30	31.50	
10 Glim,	50	10	5.00	32 1-2	3.38	
1 Bd. Bld. Bdr.	14	35	4.90	40	2.94	
Ceil.	36	7 1-2	2.70	30	1.89	
10 Brz.	4000	9	360.00	35	234.00	
2 Bd. Bdr.	1100	25	275.00	40	165.00	
Ceil.	2394	8	191.52	32 1-2	129.28	
12 Glim,	1800	13 1-2	243.00	35	157.95	
1 Bd. Bdr.	500	40	200.00	45	110.00	
Ceil.	1000	11	110.00	32 1-2	74.25	
10 oz. Glim,	600	11	66.00	32 1-2	44.55	
1 B. Bld. Bdr.	150	35	52.50	40	31.50	
Ceil.	300	9	27.00	32 1-2	18.23	
						$1249.61

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Keystone Wall Paper Company—Cont.

Nov. 30th.

Wht. Blk.	2100	6	126.00	25	94.50
2 Bd. Bdr.	326	18	58.68	40	35.21
Ceil.	1036	5 1-2	56.98	25	42.74
Wht. Blk.	200	5 1-2	11.00	25	8.25
2 Bd. Bdr.	28	15	4.20	35	2.73
Ceil.	150	5 1-2	8.25		
Wht. Blk.	150	6	9.00	25	12.94
1 B. Bdr.	38	23	8.74	40	5.25
Ceil.	100	5 1-2	5.50		
Wht. Blk.	300	6	18.00	25	17.63
2 Bd. Bdr.	36	18	6.48	40	3.89
Ceil.	100	6	6.00	25	4.50
10 Glim,	600	7 1-2	45.00	30	31.50
1 B. Bld. Bdr.	150	30	45.00	40	27.00
Ceil.	400	7 1-2	30.00	30	21.00
10 Glim,	250	11	27.50	32 1-2	18.57
1 Bd. Bld. Bdr.	64	35	22.40	40	13.44
Ceil.	166	9	14.94	32 1-2	10.09
10 Glim,	100	12 1-2	12.50	35	8.13
1 B. Bl. Bdr.	26	40	10.40	45	5.72
Ceil.	50	9	4.50	32 1-2	3.04
Emb. Hang,	50	18	9.00		

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Keystone Wall Paper Company—Cont.

1 Bd. Bl. Bdr.	12	55	6.60			
Ceil.	30	15	4.50	45	11.06	
						$377.19

Dec. 14th.

Wht. Blk.	350	6 1-2	22.75	27 1-2	16.50	
2 Bd. Bdr.	84	28	23.52	40	14.11	
Ceil.	252	5 1-2	13.86	25	10.40	
1 Bd. Bdr.	160	23	36.80	40	22.08	
10 oz. Bzes.	50	10	5.00	35	3.25	
1 Bd. Bld. Bdr.	12	35	4.20	40	2.52	
Ceil.	30	7 1-2	2.25	30	1.58	
10 oz. Glim,	512	11	56.32	32 1-2	38.02	
1 Bd. Bld. Bdr.	150	9	23.76	35	15.45	
12 oz. Bzes.	150	10	15.00	37 1-2	9.37	
1 Bd. Bld. Bdr.	38	40	15.00	45	8.36	
Ceil.	84	10	8.40	37 1-2	5.25	
2 Bd. Bdr.	12	25	3.00			
Emb. Side,	1200	13 1-2	162.00	40	99.00	
1 Bd. Bdr. Bld.	350	45	157.50	45	86.62	
Ceil.	700	12 1-2	87.50	40	52.50	
Emb. Side,	1600	15	240.00			
1 Bd. Bld. Bdr.	450	50	225.00			
Ceil.	900	15	135.00	45	330.00	
						$742.10

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Keystone Wall Paper Company—Cont.

Dec. 16th.

12 oz. Brz.	92	12 1-2	11.50	40	6.90	
1 Bd. Bld. Bdr.	62	45	27.90	45	15.35	
Ceiling,	48	11	5.28	37 1-2	3.30	
Emb. Side,	150	15	22.50			
1 Bd. Bld. Bdr.	150	45	67.50			
Ceiling,	150	15	22.50			
Emb. Side,	160	18	28.80			
1 Bd. Bld. Bdr.	150	55	82.50	45	123.09	
Ceiling,	150	13 1-2	20.25			
Emb. Side,	150	13 1-2	20.25	40	24.30	
1 Bd. Bld. Bdr.	150	45	67.50	45	27.13	
Ceiling,	150	12 1-2	18.75	40	11.25	
						$221.32

Dec. 21st.

Brn. Hang,	2000	4	80.00	20	64.00	
2 Band. Bdr.	250	15	37.50	35	24.38	
Wht. Blk.	2000	5	100.00	25	75.00	
2 B. Bdr.	400	15	60.00	35	39.00	
Wht. Blk.	1750	6 1-2	113.75	27 1-2	82.47	
Ceil.	1010	5 1-2	55.55	25	41.67	
2 B. Bdr.	234	18	42.12	40	25.28	

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Keystone Wall Paper Company—Cont.

Wht. Blk.	500	6	30.00	25	22.50	
1 B. Bdr.	14	23	3.22			
1 B. Bld. Bdr.	38	28	10.64	40	8.32	
Ceil.	132	5 1-2	7.26	25	5.45	
Emb. Hang.	992	15	148.80			
Ceil.	524	15	78.60			
1 B. Bld. Bdr.	20	50	10.00			
	162	45	72.90	45	170.67	
Wht. Blk.	100	7 1-2	7.50	30	5.25	
2 Band. Bdr.	28	25	7.00	40	4.20	
Ceil.	50	6	3.00	25	2.25	
10 Glim,	120	10	12.00	32 1-2	8.10	
1 B. Bdr.	32	35	11.20	40	6.72	
Ceil.	66	7 1-2	4.95	30	3.47	
12 oz. Brze.	200	10	20.00	37 1-2	12.50	
	50	40	20.00	45	11.00	
	120	10	12.00	37 1-2	7.50	
						$619.73
			Dec. 22nd.			
2 Bd. Bdr.	50	25	12.50	40	7.50	
						$7.50
			Dec. 30th.			
W. Blank,	2700	5	135.00	25		

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Keystone Wall Paper Company—Cont.

Ceiling,	350	5	17.50	25	114.38	
E. B. Bdr.	84	15	12.60	35	8.19	
W. Blank,	300	6	18.00	25	13.50	
2 B. Bdr.	40	18	7.20	40	4.32	
Ceiling,	180	5	9.00	25	6.75	
12 oz. Glim,	100	11	11.00	32 1-2	7.43	
1 B. Bdr.	28	35	9.80	40	5.88	
Ceiling,	66	9	5.94	32 1-2	4.01	
Embossed,	850	18	153.00	45	84.15	
1 B. Bdr.	150	55	82.50	45	45.38	
Ceiling,	450	13 1-2	60.75	40	36.45	
						$330.44

Jan. 6th, 1899.

Brown Blk,	1200	4	48.00	20	38.40	
2 B. B. Bdr.	144	15	21.60	35	14.04	
W. Blank,	2000	5	100.00	25	75.00	
2 B. Bdr.	240	15	36.00	35	23.40	
10 oz. Glim,	1300	7 1-2	97.50	30	68.25	
1 Bd. Bld. Bdr.	438	30	131.40	40	78.84	
Ceiling,	950	7 1-2	71.25	30	49.88	
W. Blank,	350	6	21.00			
Ceiling,	350	5 1-2	19.25	25	30.19	
W. Blank,	110	6 1-2	6.50	27 1-2	4.71	

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Keystone Wall Paper Company—Cont.

	250	5 1-2	13.75	25	10.31	
Glim 10 oz.	130	10	13.00	32 1-2	8.78	
1 Bd. Bld. Bdr.	32	35	11.20	40	6.72	
Ceiling,	120	7 1-2	9.99	30	6.30	
12 oz. Brz.	900	12 1-2	112.50	40	67.50	
1 Bd. Bld. Bdr.	238	45	107.10	45	58.91	
Ceiling,	550	11	60.50	37 1-2	37.81	
Emb. Hang.	24	13 1-2	3.24	40	1.95	
1 Bd. Bld. Bdr.	6	45	2.70	45	1.49	
Ceiling,	14	12 1-2	1.75	40	1.05	
						$583.53

Jan. 13th, 1899.

Brown Hang,	4900	4	196.00	20	156.80	
2 B. Bdr.	584	15	87.60	35	56.94	
White Blk.	50	6	3.00	25	2.25	
Emb. Hang,	850	13 1-2	114.75	40	68.85	
1 B. B. Bdr.	150	45	67.50	45	37.13	
	350	12 1-2	43.75	40	26.25	
						$34.22

Jan. 20th, 1899.

Brown Blnk.	4350	4	174.00	20	139.20	

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Keystone Wall Paper Company—Cont.

2 B. Bdr.	476	15	71.40	35	46.41	
Wht. Blk.	1600	5 1-2	88.00	25	66.00	
2 B. Bdr.	230	15	34.50	35	22.43	
Ceiling,	900	5 1-2	49.50	25	37.13	
10 oz. Glim,	600	8 1-2	51.00	30	35.70	
1 B. Bord.	150	25	37.50	40	22.50	
Ceiling	300	7 1-2	22.50	30	15.75	
10 oz. Glim	150	9	13.50	32 1-2	9.11	
1 B. Bord.	36	25	9.00	40	5.40	
Ceiling	112	7 1-2	8.40	30	5.88	
						$405.51

Jan. 27th.

Brown Blnk.	10500	4	420.00	20	336.00	
2 Bd. Bld. Bdr.	1290	15	193.50	35	125.78	
W. Blank	50	7 1-2	3.75	30	2.63	
1 Bd. Bld. Bdr.	16	25	4.00	40	2.40	
Ceiling	32	6	1.92	25	1.44	
1 Bd. Bld. Bdr.	64	45	28.80	45	15.84	
Ceiling	150	12 1-2	18.75			
Emb. Bdr. 2 B.	42	30	12.60	40	18.81	
1 Bd. Bld. Bdr.	52	50	26.00			
Emb. Bdr. 1 Bd. B.	152	45	23.40			
Ceiling,	132	15	19.80			

Keystone Wall Paper Company—Cont.

1 Bd. Bld. Bdr.	54	55	29.70	45	54.40	
Ceiling	60	13 1-2	8.10	40	4.86	
						$562.16
			Jan. 30th.			
Brn. Blnk.	8500	4	340.00	20	272.00	
2 B. Border	1000	15	150.00	35	97.50	
10 oz. Brz.	120	9	10.80	35	7.02	
2 B. Border	16	25	4.00	40	2.40	
Ceiling	86	8	6.88	32 1-2	4.65	
10 oz. Brze.	100	10	10.00	35	6.50	
2 B. Border	12	30	3.60	40	2.16	
Ceiling	60	8	4.80			
10 oz. Bronze	50	8	4.00	32 1-2	5.94	
2 B. Border	6	25	1.50	40	.90	
Ceiling	32	8	2.56	32 1-2	1.73	
						$400.80
			Feb. 6th.			
Brown Hang.	6000	4	240.00	20	192.00	
2 B. Bor.	750	15	112.50	35	73.13	
12 oz. Glim.	650	11	71.50	32 1-2	48.27	
1 B. B. Bdr.	164	35	57.40	40	34.44	
Ceiling	368	9	33.12	32 1-2	22.36	

THIS PAGE BOUND VER

Keystone Wall Paper Company—Cont.

16—212	12 oz. Brz.	114	10	11.40	37 1-2	7.13
	1 B. B. Bdr.	28	40	11.20	45	6.16
	Ceiling	68	10	6.80	37 1-2	4.25
						$387.74
			Feb. 27th.			
	Brown Hang.	600	4	24.00	20	19.20
	2 B. B. Bor.	100	15	15.00		
	2 B. Bor.	4	15	.60	35	10.14
	Ceiling	50	5	2.50	25	1.88
	1 B. B. Bdr.	10	30	3.00	40	1.80
	Ceiling	150	7 1-2	11.25	30	7.88
	W. Blank	50	6 1-2	3.25	27 1-2	2.36
	1 B. B. Bor.	14	28	3.92	40	2.36
	Ceiling	26	5 1-2	1.43	25	1.07
	12 oz. Glim	74	10	7.40	32 1-2	5.00
	1 B. B. Bor.	18	35	6.30	40	3.78
	Ceiling	42	9	3.78	32 1-2	2.55
	12 oz. Brze.	50	11	5.50	37 1-2	3.44
	1 B. B. Bdr.	14	35	4.90	40	2.94
	Ceiling	30	9	2.70	35	1.76
	12 oz. Brze.	300	13 1-2	40.50	40	24.30
	1 B. Bdr.	122	40	48.80	45	26.84
	Ceiling	318	11	34.98		

Keystone Wall Paper Company—Cont.

12 oz. Brze.	300	11	33.00	37 1-2	42.49	
1 B. B. Bdr.	130	35	445.50	40	27.30	
Ceiling	312	11	34.32	37 1-2	21.45	
						$208.54
			March 2nd.			
Brown Hang.	300	4	12.00	20	9.60	
W. Blank	2100	5	105.00	25	78.75	
2 B. B. Bdr.	180	15	27.00	35	17.55	
W. Blank	400	6	24.00	25	18.00	
2 B. Bdr.	78	18	14.04	40	8.43	
Ceiling	400	5 1-2	22.00			
W. Blank	50	6	3.00	25	18.75	
1 B. Bdr.	12	23	2.76	40	1.66	
Ceiling	26	5 1-2	1.43	25	1.07	
12 oz. Brz.	850	13 1-2	114.75	40	68.85	
1 Bd. Bld. Bdr.	216	45	97.20	45	53.46	
Ceiling	510	12	63.75	40	38.25	
						$314.37
			March 9th.			
Brown Hang.	600	4	24.00	20	19.20	
2 B. Bdr.	80	15	12.00	35	7.80	
Emb. Hang.	700	20	140.00	45	77.00	

THIS PAGE BOUND VERT

Keystone Wall Paper Company—Cont.

1 B. B. Bdr.	174	60	104.40	50	52.20	
Ceiling	450	15	67.50	45	37.13	
						$193.33

March 10th.

W. Blank,	600	5 1-2	33.00	25	24.75	
2 B. Bdr.	80	15	12.00	35	7.80	
Ceiling	300	5 1-2	16.50	25	12.38	
10 oz. Bze.	1500	8	120.00	32 1-2	81.00	
1 B. Bdr.	88	30	26.40			
2 B. Bdr.	24	25	6.00	40	19.44	
Ceiling	900	8	72.00	32 1-2	48.60	
Emb. Hang.	36	16	5.76			
1 Bd. Bld. Bdr.	8	50	4.00	45	5.37	
Ceiling	18	13 1-2	2.43	40	1.46	
						$200.80

March 14th.

W. Blank,	100	6 1-2	6.50	27 1-2	4.72
1 B. Bdr.	26	23	5.98	40	3.59
Ceiling,	66	6 1-2	4.29	27 1-2	3.11
W. Blank,	650	5	32.50		
Ceiling,	26	5	1.30	25	25.35
2 B. Bdr.	74	15	11.10	35	7.22

Brown Hang,	800	4	32.00	20	25.60	
2 Bd. Bdr.	100	15	15.00	35	9.75	
12 oz. Bze.	150	10	15.00	37 1-2	9.38	
1 B. B. Bdr.	36	40	14.40	45	7.92	
Ceiling,	86	10	8.60	37 1-2	5.38	
						$102.02
			March 23rd.			
W. Blank,	600	5	30.00	25	22.50	
2 B. Bdr.	60	15	9.00	35	5.85	
12 oz. Brz. Side,	400	8	32.00	32 1-2	21.60	
1 B. Bdr.	36	30	10.80			
2 B. Bdr.	150	25	37.50	40	28.98	
Ceiling,	300	8	24.00	32 1-2	16.20	
Brown Hang,	200	4	8.00	20	6.40	
2 B. Bdr.	16	30	4.80	40	2.88	
Emb. Hang,	22	20	4.40	45	2.42	
1 B. B. Bdr.	6	60	3.60	50	1.80	
Ceiling,	14	15	2.10			
Emb. Hang,	46	18	8.28			
1 B. B. Bdr.	12	55	6.60			
Ceiling,	30	15	4.50	45	11.82	
2 B. Bdr.	14	15	2.10	35	1.37	
Emb. Hang,	198	18	35.64			

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Keystone Wall Paper Company—Cont.

1 B. B. Bdr.	50	55	27.50	45	34.73	
Ceiling,	120	13 1-2	16.20	40	9.72	
						$166.27
		March 27th.				
Emb. Hang.	20	13 1-2	2.70	40	1.62	
1 B. B. Bdr.	5	45	2.25	45	1.24	
Ceiling,	18	12 1-2	2.25	40	1.35	
						$4.21
		March 27th.				
Brown Hang.	650	4	26.00	20	20.80	
2 B. Bdr.	80	15	12.00			
Ceiling,	140	9	12.60	35	15.99	
	38	7 1-2	2.85	30	2.00	
Emb. Hang.	428	13 1-2	57.78	40	34.67	
1 Bd. Bld. Bdr.	94	40	37.60	45	20.68	
Ceiling,	282	12 1-2	35.25	40	21.15	
12 oz. Bz. Side,	100	15	15.00			
1 Bd. Bl. Bdr.	26	50	13.00	45	15.40	
Ceiling,	50	12 1-2	6.25	40	3.75	
						$134.44
		April 3rd.				
Emb. Hang.	20	16	3.20			

Keystone Wall Paper Company—Cont.

1 B. B. Bd.	6	50	3.00			
Ceiling,	14	15	2.10	45	4.57	$4.57
			April 3rd (or 13th).			
1 B. B. Bdr.	50	45	22.50			
Ceiling,	44	15	6.60	45	16.01	$16.01
			April 4th.			
White Blk.	100	6 1-2	6.50	27 1-2	4.72	
1 B. B. Bor.	26	28	7.28	40	4.37	
Ceiling,	50	5 1-2	2.75			
	20	5	1.00	25	2.82	
12 oz. Br.	172	15	25.80			
1 B. B. Bdr.	44	50	22.00	45	26.29	
Ceiling,	110	12 1-2	13.75	40	8.25	$46.45
			April 17th.			
Brown Hang.	2600	4	104.00	20	83.20	
2 B. Bdr.	290	15	43.50	35	28.28	
Ceiling,	50	6	3.00	25	2.25	$113.73

THIS PAGE BOUND VERT

Keystone Wall Paper Company —Cont.

April 18th.

Emb. Hang.	1058	15	158.70			
1 B. B. Bdr.	282	45	126.90			
Ceiling,	642	15	96.30	45	210.05	
						$210.05

April 24th.

White Blk.	1000	5	50.00	25	37.50	
2 B. B. Bdr.	50	15	7.50	35	4.88	
						$42.38

April 27th.

Emb. Hang.	1552	13 1-2	209.52	40	125.71	
1 B. B. Bdr.	378	45	170.10	45	93.96	
Ceiling,	920	12 1-2	115.00			
12 oz. Br.	50	12 1-2	6.25	40	72.75	
1 B. B. Bd.	12	45	5.40	45	2.97	
Ceiling,	30	11	3.30	37 1-2	2.06	
						$297.05

April 28th.

W. Blanks,	1000	5	50.00	25	37.50	
2 B. Bor.	50	15	7.50	35	4.88	
						$42.38

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Keystone Wall Paper Company—Cont.

May 2nd.

W. Blk.	150	6	9.00	25	6.75	
2 B. Bdr.	18	18	3.24	40	1.95	
						$8.70

June 15th.

1 Bd. Bld. Bdr.	8	25	2.00	40	1.20	
Ceiling,	540	5 1-2	29.70	25	22.28	
1 Bd. Bdr.	36	30	10.80	40	6.48	
1 Bd. Bld. Bdr.	16	45	7.20	45	3.96	
Ceiling,	100	11	11.00	37 1-2	6.88	
Embossed,	6	45	2.70	45	1.49	
Ceiling,	84	12 1-2	10.50	40	6.30	
1 Bd. Bld. Bdr.	26	50	13.00			
Ceiling,	156	15	23.40	45	20.02	
2 Bd. Bdr.	22	35	7.70	40	4.62	
						$73.23
Total.						$10,785.78

THIS PAGE BOUND VERTI

AL IN BOOK

Wm. H. Mairs & Co.

Nov. 4, 1898.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
9 Brown,	4650	4	186.00	20	148.80	
White,	310	5	15.50	25	11.63	
	1056	5 1-2	58.08	25	43.56	
	742	6	44.52	25	33.39	
	250	6 1-2	16.25	27 1-2	11.78	
	150	7	10.50	30	7.35	
	600	7 1-2	45.00	30	31.50	
Ind. Bdr.	400	15	60.00	35	39.00	
Col. Bdr.	628	15	94.20	35	61.23	
	32	18	5.76	40	3.46	
2 B. C. Bdr.	12	18	2.16	40	1.30	
2	38	22	8.36	40	5.02	
1	6					
1	36					
	12	28	15.12	40	9.07	
1	60	25	15.00	40	9.00	
	150	30	45.00	40	27.00	
						$443.09

Nov. 11, 1898.

9 oz. Browns,	1950	4	78.00	20	62.40	

THE LEWIS VOIGHT & SONS CO.

Wm. H. Mairs & Co.—Cont.

Whites,	450	5 1-2	24.75	25	18.56	
Whites,	174	6	10.44	25	7.83	
Whites,	150	6 1-2	9.75	27 1-2	7.07	
10 oz. Gilts,	30	9	2.70	35		
10 oz. Gilts,	50	10	5.00	35	5.01	
14 Emb. Gilts,	1000	11	110.00	37 1-2	68.75	
14 Emb. Gilts,	550	12 1-2	68.75	40	41.25	
Col. Bor.	242	15	36.30	35	23.60	
2 B. B. Col. Bor.	38	18	6.84	40	4.10	
1 B. Gilt,	12	40	4.80	45		
1 B. Emb. Col. Bor.	300	45	135.00	45	76.89	
2 B. Gilt Col. Bor.	18	22	3.96	40	2.38	
						$317.84

Nov. 17th.

9 Whites,	9450	5	472.50	25	354.38	
	4900	5 1-2	269.50	25	202.13	
Col. Bord.	1336	15	200.40	35	130.26	
						$686.77

Nov. 22nd.

9 oz. Brn.	4850	4	194.00	20	155.20	
White,	6608	5	330.40	25	247.80	
	960	5 1-2	52.80	25	39.60	

THIS PAGE BOUND VERTI

Wm. H. Mairs & Co.—Cont.

	1316	6	78.96	25	59.22	
	300	6 1-2	19.50	27 1-2	14.14	
	2050	7	143.50	30	100.45	
Gilt,	630	11	69.30	37 1-2	43.31	
	1050	12 1-2	131.25	40	78.75	
	50	13 1-2	6.75	40	4.05	
C. Bdr.	1256	15	188.40	35	122.46	
						$864.98

Nov. 22, 1898.

2 B. & B. Col. Bdr.	20	18	3.60	40	2.16	
1	658	28	184.24	40	110.54	
1 B. B. Gilt,	360	45	162.00	45	89.10	
						$201.80

Nov. 29, 1898.

9 oz. Brn.	5150	4	206.00	20	164.80	
White,	2030	6	121.80	25	91.35	
	4250	7	297.50	30	208.25	
12 Gilt,	24	12 1-2	3.00	40	1.80	
	88	18	15.84	45	8.72	
C. Bdr.	620	15	93.00	35	60.45	
1 B. B. Col. Bdr.	1082	28	302.96	40	181.78	
1 B. Gilt,	18	50	9.00	45	4.95	
						$722.10

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Wm. H. Mairs & Co.—Cont.

Dec. 7, 1898.

9 Browns,	2050	4	82.00	20	65.60	
Whites,	312	5 1-2	17.16	25		
	1800	6	108.00	25	93.87	
	600	6 1-2	39.00	27 1-2	28.28	
	2400	7 1-2	180.00	30	126.00	
Col. Bord.	356	15	53.40	35	34.71	
2 B. B. Col. Bord.	100	22	22.00	40		
	50	25	12.50	40		
	50	28	14.00	40		
	598	30	179.40	40	136.74	
						$485.20

Dec. 9th.

9 Whites,	4852	5	242.60	25	181.95	
10 Gilt,	1650	8	132.00	32 1-2	89.10	
Col. Bord.	430	15	64.50	35	41.93	
1 B. B. Gilt,	450	45	202.50	50	101.25	
						$414.23

Dec. 15th.

9 oz. Brown,	2100	4	84.00	20	67.20	
Wht.	5330	5	266.50			

THIS PAGE BOUND VER

Wm. H. Mairs & Co.—Cont.

	4642	5 1-2	255.31			
	2310	6	138.60	25	495.31	
9 oz. Wht.,	952	6 1-2	61.88	27 1-2	44.87	
	950	7	66.50			
	1000	7 1-2	75.00	30	99.05	
12 Gilt,	180	11	19.80	37 1-2	12.38	
	150	12 1-2	18.75	40	11.25	
14 Emb. Gt.	1750	15	262.50			
	850	18	153.00	45	228.53	
9 Wht.	400	7	28.00	30	19.60	
C. Bdr.	628	15	109.20	35	70.98	
	752	18	135.36			
2 B. B. Col. Bdr.	10	22	2.20			
1	24	25	6.00	40	86.14	
1 B. B. Col. Bdr.	526	28	147.28			
	250	30	75.00	40	133.37	
Gilt,	50	45	22.50			
Emb. Gilt,	250	50	125.00			
	250	55	137.50	45	156.75	
						$1425.43

Dec. 21st.

9 White,	50	5 1-2	2.75	25		
	50	5	2.50	25	3.94	

THE LEWIS VOIGHT & SONS CO.

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Wm. H. Mairs & Co.—Cont.

2 B. B. C. Bd.	50	18	9.00	40	5.40	$9.34
			Dec. 23rd.			
			77.00	25		
	1400	5 1-2	3.72	25	60.54	
9 oz. Whites,	62	6	6.50	27 1-2	4.71	
	100	6 1-2	2.88			
	32	9	5.00	35	5.12	
10 Gilts,	50	10	14.75			
	118	12 1-2	13.50	40	16.95	
	100	13 1-2	36.00	45	19.80	
	200	18	17.40	35	11.31	
	116	15	1.32	40		
Col. Bor.		22	3.36	40	2.81	
2 B. B. Col. Br.	6	28	4.80			
1 B. B. Col. Br.	12	40	9.00			
1 B. B. Col. Gilt Br.	12	45	25.00	45	21.34	
1 B. B. Col. Gilt Br.	20	50				$142.58
1 B. B. Gilt Br.	50		Dec. 29th.			
	715	5	28.60	20	22.88	
Browns,	80	5	4.00	25		
Whites,	400	6	24.00	25	21.00	

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Wm. H. Mairs & Co.—Cont.

10 Gilts,	30	9	2.70	35		
	50	9	5.50	35	5.33	
14 Emb. Gilts,	100	12 1-2	12.50	40	7.50	
Col. Bor.	98	15	14.70	35	9.56	
1 B. B. Bor.	52	28	14.56	40	8.74	
1 B. B. Gilt,	14	40	5.60	45		
1 B. B. Emb.	54	45	24.30	45	16.45	
						$91.46
			Jan. 5th, 1899.			
9 Browns,	4800	4	192.00	20	153.60	
Col. Bor.	602	15	90.30	35	58.70	
						$212.30
			Jan. 12th.			
9 Browns,	600	4	24.00	20	19.20	
9 Whites,	30	5 1-2	1.65	25		
	50	6	3.00	25	3.49	
10 Gilts,	442	8	35.36	32 1-2	23.87	
12 Gilts,	74	11	8.14	37 1-2	5.09	
Col. Bor.	72	15	10.80	35	7.02	
1 B. B. Bor.	12	28	3.36	40		
Gilt Bor.	40	25	10.00	40	8.02	
1 B. B. Gilt, B.	12	40	4.80	45	2.64	
						$69.33
			Jan. 14th.			
9 Browns,	600	4	24.00	20	19.20	

TICAL IN BOOK

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Wm. H. Mairs & Co.—Cont.

9 Whites,	1030	5	51.50	25		
	115	5 1-2	6.38	25		
	150	6	9.00	25	50.16	
10 Gilts,	450	8	36.00	32 1-2	24.30	
14 Emb.	326	12 1-2	40.75	40	24.45	
Col. Bor.	190	15	28.50	35	18.53	
1 B. B.	38	28	10.64	40		
Gilt,	36	25	9.00	40	11.79	
1 B. B. B. Emb.	54	45	24.30	45	13.37	
						$161.80

Jan. 21st.

9 Brn.	1350	4	54.00	20	43.20	
9 Wht.	162	5 1-2	8.91	25	6.69	
10 Gilt,	30	9	2.70			
	50	10	5.00	35	5.01	
12	40	11	4.40	37 1-2	2.75	
14 Emb. Gt.	240	15	36.00	45	19.80	
C. Bdr.	196	15	29.40	35	19.11	
2 B. B. Col. Br.	8	18	1.44	40	.87	
1 B. B. Gt. Br.	16	40	6.40			
1 B. Emb. Gt.	68	55	37.40			
1	68	50	34.00	45	42.79	
						$140.22

THIS PAGE BOUND VER

17—212

Wm. H. Mairs & Co.—Cont.

Jan. 27th.

9 Browns,	3800	4	152.00	20	121.60	
9 Whites,	50	6	3.00	25	2.25	
9	100	6 1-2	6.50	27 1-2	4.72	
12 Gilts,	26	12 1-2	3.25	40	1.95	
12	36	18	6.48	45	3.57	
Col. Bor.	370	15	55.50	35	36.08	
1 B. B. Bor.	22	28	6.16	40	3.70	
Gilt Bor.	8	50	4.00	45	2.20	
						$176.07

Jan. 28th.

9 Browns,	1400	4	56.00	20	44.80	
9 Whites,	236	5 1-2	12.98	25		
9	200	6	12.00	25	18.74	
12 Gilts,	52	12 1-2	6.50	40	3.90	
Col. Bord.	176	15	26.40	35	17.16	
1 B. B. Bord.	40	25	10.00	40	6.00	
						$90.60

Jan. 31st

9 Whites,	450	5	22.50	25	16.88	
	80	5 1-2	4.40	25	3.30	

Wm. H. Mairs & Co.—Cont.

Col. Bord.	36	15	5.40	35	3.51	
1 B. B. Bord.	14	25	3.50	40	2.10	
						$25.79
			Feb. 14th.			
9 Wht.	82	5 1-2	4.51	25	3.38	
12 Glim.	80	10	8.00	32 1-2	5.40	
10 Gilt,	164	9	14.76			
10	250	10	25.00	35	25.85	
12	74	11	8.14	37 1-2	5.09	
2 B. B. Col. Bor.	6	18	1.08			
1 B. B. Glim. Bd.	12	35	4.20			
2 B. B. Gt. Bodr.	14	35	4.90	40	6.11	
1	58	40	23.20	45	12.76	
						$58.59
			Feb. 22nd, 1899.			
Browns,	1000	4	40.00	20	32.00	
Whites,	160	5 1-2	8.80	25	6.60	
	100	6	6.00	25	4.50	
Flats,	206	10	20.60	32 1-2	13.91	
	282	15	42.30	37 1-2	26.44	
Col. Bor.	22	15	3.30	35	2.15	
1 B. B. Bor.	6	30	1.80	40	1.08	

THIS PAGE BOUND VER

Wm. H. Mairs & Co.—Cont.

1 B. B. Flat, B.	68	45	30.60	45	16.83	
						$103.51
			Feb. 23rd.			
12 Gilt,	70	10	7.00	37 1-2		
12 Gilt,	16	11	1.76	37 1-2	5.48	
12 Gilt,	100	12 1-2	12.50			
12 Gilt,	24	13 1-2	3.24	40	22.41	
14 Emb.	160	13 1-2	21.60			
1 B. B. Gilt, Br.	34	45	15.30	45		
1 B. B. Emb.	24	45	10.80	45	14.36	
						$42.25
			March 16th.			
9 Whites,	150	5 1-2	8.25	25	6.19	
Col. Bor.	16	18	2.88	40	1.73	
	250	15	37.50	35	24.38	
						$32.30
			March 24th.			
9 Whites,	300	7 1-2	22.50	30	15.75	
	180	6	10.80	25	8.10	
1 B. B. Col. B.	18	28	5.04	40		
	72	30	21.60	40	15.99	
						$39.84

THE LEWIS VOIGHT & SONS CO.

RTICAL IN BOOK

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Wm. H. Mairs & Co.—Cont.

March 28th.

12 Gilts,	20	12 1-2	2.50			
	30	13 1-2	4.05			
1 BB. Col. Bor.	54	28	15.12	40	13.01	
Gilt,	8	45	3.60	45	1.98	
						$14.99

April 13th.

9 Whites,	200	5 1-2	11.00			
	450	5	22.50	25	25.13	
						$25.13

April 13th.

9 Whites,	1500	5	75.00	25	56.25	
12 Gilts,	58	12 1-2	7.25	40	4.35	
	100	15	15.00			
14 Emb. Gilts,	1085	15	162.75			
	500	18	90.00	45	147.27	
Col. Bor.	112	15	16.80	35	10.92	
1 BB. Gilt, Br.	20	50	10.00			
Emb. Gilt Br.	120	50	60.00			
	120	55	66.00	45	74.80	
						$293.59

THIS PAGE BOUND VER

Wm. H. Mairs & Co.—Cont.

April 15th, 1899.

12 Gilts,	30	11	3.30	37 1-2	2.07	
	50	13 1-2	6.75	40	4.05	
Gilt Bor.	12	45	5.40	45	2.97	
						$9.09

April 17th.

9 Whites,	250	5 1-2	13.75	25		
	50	6	3.00	25	12.57	
	80	6 1-2	5.20	27 1-2	3.77	
	50	7	3.50	30	2.45	
Col. Bor.	16	15	2.40	35	1.56	
						$20.35

April 21st.

Col. Bor.	32	15	4.80	35	3.12	
						$3.12

April 27th.

12 Gilts,	3	13 1-2	.40	40	.24	
	2	11	.22	37 1-2	.14	
1 B. Bg. Bor.	1	45	.45	45	.25	
						$ .63

263

Wm. H. Mairs & Co.—Cont.

April 27th.

9 Whites,	250	5	12.50	25	9.38	$9.38

May 9th.

12 Gilts,	3	50	1.50	45	.83	$ .83

June 19th.

9 Browns,	550	4	22.00	20	17.60	
9 Whites,	150	7	10.50	30	7.35	
10 Gilts,	50	8	4.00	32 1-2	2.70	
Col. Bord.	104	15	15.60	35	10.14	
2 B. B. Bor.	18	18	3.24			
1 B. B. Bor.	6	28	1.68	40	2.95	
1 BB. Gilt Bor.	4	45	1.80			
1 BB. Emb. Bor.	8	45	3.60			
1 BB. Emb. Bor.	10	50	5.00	45	5.72	
						$46.46
Total,						$7380.99

THIS PAGE BOUND VER

Middleton Wall Paper Co.

Oct. 11th, 1898.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
Brown Blks.	17948	4	717.92	25	538.44	
White Blks.	19500	4 1-2	877.50	27 1-2	636.19	
2 Bd. Col. Bor.	2200					
2 Bd. Col. & Wht.	1600	15	570.00	40	342.00	
						$1516.63
			Oct. 29th.			
Wht. Blnk.	37332	4 1-2	1679.94	27 1-2*	1217.96	
	10204	5	510.20	30*	357.14	
2 Band. Col. Bd.	3900	15	585.00	40*	351.00	
						$1926.10
			Nov. 11th.			
Brown Blk.	20920	4	836.80	25*	627.60	
White Blks.	4508	4 1-2	202.86	27 1-2*	147.07	
Col. Bdr.	2980	15	447.00	40*	268.20	
						$1042.87
			Dec. 30th.			
Wht. Blks.	22050	4 1-2	992.25	27 1-2*	719.38	

THE LEWIS VOIGHT & SONS CO.

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Middleton Wall Paper Co.—Cont.

2 Band Col. Bdr.	1938	15	290.70	40*	174.42	
White Blk.	4850	5	242.50	30*	169.75	
						$1063.55
			Jan. 13th, 1899.			
White Blks.	1600	5	80.00	30*	56.00	
						$56.00
			Feb. 23rd.			
White Blk.	26960	4 1-2	1213.20	27 1-2*	879.57	
2 Band Col. Bdr.	2394	15	359.10	40*	215.46	
White Blk.	3838	5	191.90	30*	134.33	
						$1229.36
			March 28th, 1899.			
White Blks.	3900	4 1-2	175.50	27 1-2*	127.24	
Col. Bdr.	320	15	48.00	40*	28.80	
						$156.04
			April 11th.			
Wht. Blnk.	7072	4 1-2	318.24	27 1-2*	230.73	
2 Band Col. Bdr.	538	15	80.70	40*	48.42	
Brwn. Blnk.	3600	4	144.00	25*	108.00	
Wht. Blnk.	200	5	10.00	30*	7.00	
						$394.15

THIS PAGE BOUND VER

Middleton Wall Paper Co.—Cont.

			April 18th.			
	3300	4 1-2	139.50	27 1-2*	101.14	
Col. Brd.	204	15	30.60	40*	18.36	
						$119.50
			April 22nd.			
Wht. Blks.	3000	4 1-2	135.00	27 1-2*	97.88	
Col. Bdr.	250	15	37.50	40*	22.50	
						$120.38
			May 3rd.			
White Blks.	900	4 1-2	29.25	27 1-2*	21.21	
						$21.21
			June 7th.			
White Blks.	4000	4 1-2	180.00	27 1-2*	130.50	
						$130.50
			June 29th, 1899.			
Brown Blnk.	1000	4	40.00	25*	30.00	
White Blnk.	2900	4 1-2	130.50	27 1-2*	94.61	
2 Band Col. Bdr.	290	15	43.50	40*	26.10	
Wht. Blnk.	1430	5	71.50	30*	50.05	
						$200.76
	Total,					$7,977.05

THE LEWIS VOIGHT & SONS CO.

ICAL IN BOOK

W. N. Peak.

Nov. 22nd, 1898.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
White's,	1240	5	62.00	25	46.50	
White's	4692	5 1-2	258.06	25	193.55	
White's	428	15	64.20	35	41.73	
White's,	108	20	21.60	40	12.96	
10 oz. Glim.	80	7 1-2	6.00	30	4.20	
	12	25	3.00	30	2.10	
10 oz. Bronze,	144	7	10.08	30	7.06	
10 oz. do	12	20	2.40	40	1.44	
12 oz. do	82	11	9.02	37 1-2	5.64	
12 oz. do	12	35	4.20	40	2.52	
						$317.70

Dec. 6th, 1898.

White's	160	5	8.00	25	6.00	
White's	3580	5 1-2	196.90	25	147.68	
White's	122	15	18.30	35	11.90	
Whites,	382	20	76.40	40	45.84	
10 oz. Bronzes,	1306	7	91.42	30	64.00	
10 oz. do	110	20	22.00			

THIS PAGE BOUND VER

W. N. Peak—Cont.

12 oz. do	50	13 1-2	6.75	40	17.25	
12 oz. do	12	40	4.80	45	2.64	
						$295.31

Dec. 10th, 1898.

White's	1058	5 1-2	58.19	25	43.65	
White's	166	20	33.20	40	19.92	
						$63.57

Dec. 24th, 1898.

Whites,	226	5 1-2	12.43	25	9.33	
Whites	6	15	.90	35	.59	
Whites	24	20	4.80	40	2.88	
						$12.80

Jan. 18th, 1899.

Whites,	86	5	4.30		
Whites,	412	5 1-2	22.66	25	20.22
Whites,	32	15	4.80	35	3.12
Whites,	14	20	2.80	40	1.68
10 oz. Glim.	170	7 1-2	12.75	30	8.93
10 oz. do	24	25	6.00	40	3.60
12 oz. Bronzes,	408	11	44.88	37 1-2	28.05
12 oz. do	210	13 1-2	28.35		

TICAL IN BOOK

W. N. Peak—Cont.

12 oz. do	48	35	16.80	40	27.09	
12 oz. do	50	40	20.00	45	11.00	
						$103.69

March 3*th*, 1899.

Whites,	50	5 1-2	2.75	25	2.07	
10 oz. Bronzes,	116	7	8.12	30	5.69	
10 oz. do	8	20	1.60	40	.96	
						$8.72

March 25th.

Whites,	2	15	.30	35	.20	
						$ .20
	Total,					$801.99

Philadelphia Wall Paper Mills.

Sept. 29th, 1898 (Oct. 1).

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.
Whites,	85500	4 1-2	3847.50	27 1-2	2789.44

	7200	15	1080.00	40	648.00	
						$3437.44
			Nov. 22nd.			
	7600	4 1-2	342.00	27 1-2*	247.95	
	500	15	75.00	40*	45.00	
						$292.95
			Dec. 7th.			
	15000	4 1-2	675.00	27 1-2*	489.38	
	2800	5	140.00			
	3200	5 1-2	176.00	30*	221.20	
	1650	15	247.50	40*	148.50	
	514	20	102.80	45*	56.54	
						$915.62
			Dec. 28th.			
	3000	4 1-2	135.00			
	1500	4 1-2	67.50	27 1-2*	146.81	
	600	5 1-2	33.00			
	4400	5	220.00	30*	177.10	
Gilts,	300	7	21.00	35*	13.65	
Whites,	2300	4 1-2	103.50	27 1-2*	75.04	
	350	5 1-2	19.25			

Philadelphia Wall Paper Mills—Cont.

	2300	5	115.00	30*	93.98	
Gilts,	166	7	11.62	35*	7.55	
Whites,	550	15	82.50	40*	49.50	
	150	20	30.00	45*	16.50	
	528	15	79.20	40*	47.52	
Gilts,	40	20	8.00	45*	4.40	
						$632.05
			Jan. 7th, 1899.			
Whites,	11060	4 1-2	513.00	27 1-2*	371.93	
	1796	5 1-2	98.78	30*	69.15	
	950	15	142.50	40*	85.50	
	300	20	60.00	45*	33.00	
						$559.58
			Feb. 7th, 1899.			
	5450	4 1-2	245.25	27 1-2*	177.81	
	180	5	9.00	30*	6.30	
	216	15	3.90	40*	19.44	
						$203.55
			Feb. 11th.			
Gilts,	132	7	9.24	35*	6.01	
	12	20	2.40	45*	1.32	
						$7.33

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TICAL IN BOOK

Philadelphia Wall Paper Mills—Cont.

Feb. 22nd.

	80	7	5.60	35*	3.64	
	8	20	1.60	45*	.88	
						$4.52

April 19th.

Whites,	1146	4 1-2	51.57	27 1-2*	37.39	
	42	15	6.30	40*	3.78	
						$41.17
	Total,					$6094.21

Tarrytown Wall Paper Company.

Oct. 20, 1898.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.
Ceiling,	2400	5	120.00	30*	84.00
Wht. Blks.	12800	5 1-2			
Ceiling,	4000	5 1-2	924.00	30*	646.80

Tarrytown Wall Paper Company—Cont.

10 oz. Glim,	3000	7 1-2	225.00	35*	146.25	
Ceiling,	1000	9	90.00	37 1-2*	56.25	
12 oz. Glim,	1000	11	110.00	37 1-2*	68.75	
	1000	12 1-2	125.00	40*		
Bord.	1000	15	150.00	40*	90.00	
Frze.	500	30	150.00	45*	82.50	
Brd.	600	15	90.00	40*	54.00	
Frze.	250	35	87.50	45*	48.13	
	250	40	100.00	50*	50.00	
						$1401.68
			Nov. 26th.			
Blank,	3800	5 1-2	209.00	30*	146.30	
	2950	6 1-2	191.75	32 1-2*	129.43	
	200	7	14.00	35*	9.10	
	5300					
Gilt 10 oz.	26	8	426.08	27 1-2*	266.30	
	1300	9	117.00	40*	70.20	
	2200	11	242.00	40*	145.20	
Gilt 12 oz.	50	12 1-2	6.25	45*	3.44	
	70	15	10.50	50*	5.25	
2 Band,	300	15	45.00	40*	27.00	
1 Band.	48	28	13.44			
	1300	30	390.00			

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	24					
	12	35	12.60	45*	228.82	
	624	40	249.60	50*	124.80	
	18	50	9.00	50	4.50	
						$1160.34
			Dec. 6, 1898.			
Blank,	3060	5 1-2	168.30	30*	117.81	
	4600	6 1-2	299.00	32 1-2*	201.83	
	7000					
10 oz. Brnz.	332	8	586.56			
12 oz. Glim,	300	9	27.00	37 1-2*	383.48	
	600	12 1-2	75.00			
2 Bor.	250	15	37.50	40*	67.50	
	14	18	2.52			
1 Bor.	1000	30	300.00			
	750	30	225.00			
	54	35	18.90	45*	300.53	
	150	40	60.00	50*	30.00	
						$1101.15
			Dec. 13th.			
Blank,	7700	5	385.00	30*	269.50	
2 Bor.	420	15	63.00	40*	37.80	

12 oz. Glim,	850	9	76.50			
	1500	11	165.00	37 1-2*	150.94	
1 Bor.	372	35	130.20	45*	71.61	
						$529.85
			Dec. 21, 1898.			
Blank,	50	5 1-2	2.75	30*	1.93	
1 Bd. Blank,	50	25	12.50	45*	6.88	
						$8.81
			Dec. 17th.			
Blanks,	3400	5	170.00	30*		
	800	5 1-2	44.00	30*	149.80	
	350	6 1-2	22.75	32 1-2*	15.36	
	600	8	48.00	37 1-2*		
	100	8	8.00	37 1-2*		
10 oz. Gilt,	70	8	5.60	37 1-2*	38.50	
	210	9	18.90	40*		
10 oz. Glim,	120	9	10.80	40*	11.34	
	200	11	22.00	37 1-2*	20.50	
10 oz. Gilt,	150	11	16.50	40*	9.90	
Emb. Gilt,	300	12 1-2	37.50	42 1-2*	21.57	
	550	15	82.50	50*	41.25	
Emb. Silk,	1000	15	150.00	40*		

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Tarrytown Wall Paper Company—Cont.

2 f. a.	352	15	52.80	40*	121.60	
1 f. a.	150	30	45.00			
	50	35				
	24	35	25.90	45*	39.00	
	104	40	41.60			
	400	50	200.00	50*	120.80	
						$589.70
			Dec. 30th.			
Blank,	2950	5 1-2	162.25	30*	113.58	
Brnz. 10 oz.	390	8	31.20	37 1-2*	19.50	
	604	10	60.40	40*	36.24	
12 oz.	364	12 1-2	45.50	45*	25.03	
Embossed,	650	15	97.50	50*	48.75	
Emb. Silk,	50	15	7.50			
	26	15	3.90	40*	6.84	
Brz. 12 oz.	50	16	8.00	50*	4.00	
1 Bd.	500	25	125.00	45*	68.75	
	154	40	61.60			
	218	50	109.00	50*	85.30	
						$407.99
			Jan. 10th, 1899.			
Blank,	3760	5	188.00	30*	131.60	

Tarrytown Wall Paper Company—Cont.

2 Bd. Blank,	292	15	43.80	40*	26.28	$157.88
			Jan. 18th.			
Blank,	800	5	40.00	30*	28.00	
	72	15	10.80	40*	6.48	$34.48
			Jan. 19th.			
Blank,	800	5	40.00	30*	28.00	
	72	15	10.80	40*	6.48	$34.48
			Jan. 19th, 1899.			
Blank,	350	5	17.50			
	2362	5 1-2	129.91			
	150	6	9.00	30*	109.49	
	150	7	10.50	35*	6.83	
Glimmer,	3200	9	297.00			
	2900	11	319.00	37 1-2*	385.00	
	2600	12 1-2	325.00			
Blanks,	280	15	42.00	40*	220.20	
	44	18	7.92			
	820	35	287.00	45*	162.21	

Tarrytown Wall Paper Company—Cont.

	700	40	280.00	50*	140.00	
						$1023.73
			Jan. 26th.			
Blank,	30	5	1.65	30*	1.16	
Glimmer,	350	9	31.50			
	600	11	66.00	37 1-2*	60.94	
	150	35	52.50	45*	28.88	
						$90.98
			Feb. 4th.			
Blank,	196	5 1-2	10.78			
	350	7	24.50	30*	24.70	
Bronze,	876	11	96.36	42 1-2*	55.41	
	6	12 1-2	.75	45*	.42	
Emb. Silk,	100	15	15.00			
	12	16	1.92	50*	8.46	
Blank,	42	18	7.56	45*	4.16	
Emb.	56	20	11.20			
Bronze,	250	40	100.00			
Emb. Silk,	80	50	41.00	50*	76.10	
Bronze,	2	50				
Embossed,	14	60	8.40	55*	3.78	
Bronze,	6	10	.60	42 1-2*	.35	

Tarrytown Wall Paper Company—Cont.

	12	12 1-2	1.50	45*	.83	
	5	45	2.25	50*	1.13	
						$175.34
			Feb. 21st.			
	100	5	5.00			
Blank,	11010	5 1-2	605.55			
	2650	6	159.00	30*	538.69	
	280	6 1-2	18.20	32 1-2*	12.29	
	4000	7	280.00	35*	182.00	
	1100	8	88.00			
	258	9	23.22	37 1-2*	69.52	
Glimmer,	400	9	36.00			
Bronze,	50	10	5.00			
10 oz.	450	11	49.50			
	132	15	19.80	40*	66.18	
Blank,	224	18	40.32			
	1242	28	347.76			
	320	30	96.00	45*	379.27	
	186					
Bronze,	80	40	106.40	50*	53.20	
Glimmer,						$1301.15
			Feb. 27th.			
Blank,	136	5 1-2	7.48	30*	5.24	

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Tarrytown Wall Paper Company—Cont.

	410	6 1-2	26.25	32 1-2*	17.99	
	250	7	17.50	35*	11.38	
Bronze,	160	10	16.00			
	100	11	11.00	42 1-2*	15.53	
	170	12 1-2	21.25	45*	11.69	
Blank,	6	18	1.08			
	116	28	32.48	45*	18.46	
Bronze,	28	40	11.20			
	46	45	20.70	50*	15.95	
						$96.24

Feb. 28th.

Bronze,	614	8	49.12	37 1-2*	30.70	
	400	9	36.00			
	726	10	72.60	40*	65.16	
	98	35	34.30	45*	18.87	
	180	40	72.00	50*	36.00	
						$150.73

March 6th.

Blank,	482	5 1-2	26.51	30*	18.56	
	850	6 1-2	55.25	32 1-2*	37.30	
	104	18	18.72	45*	10.30	
						$66.16

Tarrytown Wall Paper Company—Cont.

March 7th.

Blank,	1030	5	51.50			
	32	5 1-2	1.76	30*	37.29	
	50	7	3.50	35*	2.28	
	54	15	8.10	40	4.86	
	8	18	1.44	45*	.80	
						$45.23

March 10th.

Bronze,	2	12 1-2	.25	45*	.14	
	1	45	.45	50*	.23	
						$.37

March 11th.

Blank,	400	5 1-2	22.00	30*	15.40	
	800	6 1-2	52.00	32 1-2*	35.10	
	100	18	18.00	45*	9.90	
						$60.40

March 16th.

Blank,	160	5	8.00			
	2340	5 1-2	128.70	30*	95.69	
	650	6 1-2	42.25	32 1-2*	28.52	

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Tarrytown Wall Paper Company—Cont.

Bronze 12 oz.	126	10	12.60	42 1-2*	7.25	
	200	12 1-2	25.00	45*	13.75	
Blank,	236	15	35.40	40*	21.24	
	90	18	16.20	45*	8.91	
Brze.	54	45	24.30	50*	12.15	
						$187.51
			March 18th.			
Blank,	200	6 1-2	13.00	32 1-2*	8.78	
						$8.87
			March 25, 1899.			
Blank,	1238	5 1-2	68.09	30*	47.67	
	1470	7	102.90	30*	66.89	
Bronze,	32	12 1-2	4.00	45*	2.20	
Embossed,	400	15	60.00	50*	30.00	
Blank,	18	18	3.24	45*	1.79	
Bze.	50	16	8.00	50*	4.00	
Blank,	328	28	98.56	45*	54.21	
Bronze,	12					
Embossed,	60	50	36.00	50*	18.00	
Blank,	14	15	2.10	40*	1.26	
						$226.02
			April 13th.			
Blank,	850	5	42.50			

THE LEWIS VOIGHT & SONS CO.

TICAL IN BOOK

Tarrytown Wall Paper Company—Cont.

	600	5 1-2	33.00	30*	52.85	
	950	6 1-2	61.75	32 1-2*	41.69	
	600	8	48.00			
Glimmer,	44	9	3.96	37 1-2*	32.48	
10 oz. Br.	220	9	19.80	40*	11.88	
Glimmer,	74	10	7.40	37 1-2*	4.63	
10 oz. Br.	350	11	38.50	40*	23.10	
12 oz. Br.	50	11	5.50			
	30	11	3.30	42 1-2*	5.06	
Blank,	12	15	1.80	40*	1.08	
	150	30	45.00			
Glimmer,	36	35	12.60	45*	31.68	
Bronze,	34	40	13.60	50*	6.80	
						$211.25

April 15th.

Blk.	250	5	12.50			
	350	5 1-2	19.25	30*	22.23	
	150	6 1-2	9.75	32 1-2*	6.58	
	250	7	17.50			
Glimmer,	36	7 1-2	2.70	35*	13.13	
Blank,	300					
10 oz. Bdr.	100	8	32.00	37 1-2*	20.00	
Glimmer,	276	9	27.54	40*	16.53	

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Tarrytown Wall Paper Company—Cont.

12 oz. Bdr.	30					
Glimmer,	50	11	5.50	37 1-2*	3.44	
	400	12 1-2	50.00			
Blank,	108	15	16.20	40*	39.72	
	84	18	15.12			
	62	28	17.36			
	72	30	21.60	45*	29.75	
10 oz. Bdr.	20	40	8.00			
12 oz. Bdr.	12	45	5.40	50*	6.70	
10 oz. Bdr.	4	35	1.40	45*	.77	
						$158.85
			April 17th.			
Blank,	30	5 1-2	1.65	30*	1.16	
	538	6 1-2	34.97	32 1-2	23.61	
	1016	8	81.28	37 1-2	50.80	
	253	30	75.90	45*	41.75	
						$117.32
			April 24th.			
Embossed,	800	15	120.00	40*	72.00	
	160	50	80.00	50*	40.00	
						$112.00
			May 2nd, 1899.			
Blank,	100	5	5.00	30*	3.50	

ICAL IN BOOK

Tarrytown Wall Paper Company—Cont.

	22	15	3.30	40*	1.98	
						$5.48
			May 13th.			
Blank,	300	5 1-2	16.50	30*	11.55	
	250	7	17.50	35	11.38	
	150	8	12.00	37 1-2*	7.50	
	14	15	2.10	40*	1.26	
	50	30	15.00	45*	8.25	
						$39.94
			May 17th.			
Blank,	2426	5 1-2	133.43	30*	93.41	
	2776	6 1-2	180.44	32 1-2*	121.80	
	1506	7	105.42	35*	68.53	
	686	18	123.48	45*	67.92	
						$351.66
			May 25th.			
Blank,	29560	5	1478.00			
	2882	5 1-2	158.51	30*	1145.56	
10 oz. Br.	4800	7	336.00	35*	218.40	
Blank,	2864	15	429.60	40*	257.76	
Bronze,	850	25	212.50	45*	116.88	
						$1738.60

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Tarrytown Wall Paper Company—Cont.

June 12th.

Blank,	680	6 1-2	44.20	32 1-2*	29.84	
	3800	8	304.00	37 1-2*	190.00	
	16	20	3.20			
	1000	30	300.00	45*	166.76	
						$386.60

June 20th.

Blk.	844	5	42.20			
	350	5 1-2	19.25	30*	43.02	
	300	6 1-2	19.50	32 1-2*	13.16	
	800	7	56.00	35*	36.40	
Glimmer,	120	9	10.80	37 1-2*	6.75	
10 oz. Bdr.	100	10	10.00	40*	6.00	
Glimmer,	200	11	22.00	37 1-2*	13.75	
10 oz. Bdr.	100	11	11.00			
Blank,	146	15	21.90			
Emb. Silk,	334	15	50.10	40*	49.80	
Blank,	58	18	10.44			
	14	30	4.20	45*	8.05	
Glimmer,	30	40	12.00	50*	6.00	
						$182.93
Total,						$12,163.63

THE LEWIS VOIGHT & SONS CO.

RTICAL IN BOOK

Thomas & Davis Company.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt
			Nov. 11th, 1898.		
Blank,	5000	5	250.00	30*	175.00
	250	15	37.50	40*	22.50
	500	15	75.00	40*	45.00
	6000	5	300.00	30*	210.00
	90	15	28.50	40*	17.10
	900	5	49.50	30*	34.65
	2600	5	130.00	30*	91.00
	350	15	52.50	40*	31.50
	1400	5	70.00	30*	49.00
	2000	5	100.00	30*	70.00
	250	15	37.50	40*	22.50
	1000	5	50.00	30*	35.00
	2000	5	100.00	30*	70.00
	250	15	37.50	40*	22.50
	1000	5	50.00	30*	35.00
	1600	5 1-2	88.00	30*	61.60
	400	25	100.00	45*	55.00
	800	5 1-2	44.00	30*	30.80
	1600	5 1-2	88.00	30*	61.60

Thomas & Davis Co.—Cont.

	400	25	100.00	45*	55.00
	800	5 1-2	44.00	30*	30.80
	1600	5 1-2	88.00	30*	61.60
	400	25	100.00	45*	55.00
	800	5 1-2	44.00	30*	30.80
	3600	5 1-2	198.00	30*	138.60
	730	25	182.50	45*	100.38
	1000	5 1-2	55.00	30*	38.50
	2400	5	120.00	30*	84.00
	650	25	162.50	40*	97.50
	1250	5	62.50	30*	43.75
Gils,	800	7	56.00	35*	36.40
	100	20	20.00	45*	11.00
	400	7	28.00	35*	18.20
	800	7	56.00	35*	36.40
	100	20	20.00	45*	11.00
	400	7	28.00	35*	18.20
Gilt,	800	7	56.00	35*	36.40
	100	20	20.00	45*	11.00
	400	7	28.00	35*	18.20
	800	7	56.00	35*	36.40
	100	20	20.00	45*	11.00
	400	7	28.00	35*	18.20
	600	11	66.00	42 1-2*	37.95

Thomas & Davis Co.—Cont.

	150	40	60.00	50*	30.00	
	300	10	30.00	42 1-2*	17.25	
	200	11	22.00	42 1-2*	12.65	
	100	11	11.00	42 1-2*	6.33	
	50	45	22.50	50*	11.25	
	1000	13 1-2	135.00	45*	74.25	
	300	45	135.00	50*	67.50	
	550	13 1-2	74.25	45*	40.84	
						$2436.10

Dec. 12th, 1898.

Blk.	3000	5	150.00	30*	105.00	
	350	15	52.50	40*	31.50	
	1800	5	90.00	30*	63.00	
	200	25	50.00	45*	27.50	
	1100	5	55.00	30*	38.50	
	192	15	28.80	40*	17.28	
	650	5	32.50	30*	22.75	
Gilts,	50	7	42.00	35*	27.30	
	80	20	16.00	45*	8.80	
	350	7	24.50	35*	15.93	
Blanks,	800	5 1-2	44.00	30*	30.80	
	200	25	50.00	45*	27.50	
	450	5 1-2	24.75			

THIS PAGE BOUND VERT

Thomas & Davis Co.—Cont.

	1000	5 1-2	55.00	30*	55.83
	250	25	62.50	45*	34.37
	1600	5 1-2	88.00	30*	61.60
Golds, 12 oz.	200	15	30.00	40*	18.00
1 Bd. Bld. Bdr.	50	50	25.00	50*	12.50
	100	11	11.00	42 1-2*	6.33
	400	16	64.00		
	132	50	66.00	50*	65.00
	220	11	24.20	42 1-2*	13.92
Blanks,	1600	5 1-2	88.00	30*	61.60
	400	25	100.00	45*	55.00
	2000	5 1-2	110.00	30*	77.00
	300	25	75.00	45*	41.25
	2200	5 1-2	121.00	30*	84.70
	400	25	100.00	45*	55.00
	2400	5 1-2	132.00	30*	92.40
	400	25	100.00	45*	55.00
	2000	5 1-2	110.00	30*	77.00
	300	25	75.00	45*	41.25
	1800	5 1-2	99.00	30*	69.30
	300	25	75.00	45*	41.25
	600	5 1-2	33.00	30*	23.10
Gilts,	800	8	64.00	37 1-2*	40.00
	200	35	70.00	45*	38.50

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THE LEWIS VOIGHT & SONS CO.

TICAL IN BOOK

289

Thomas & Davis Co.—Cont.

	150	40	60.00	50*	30.00	
	300	10	30.00	42 1-2*	17.25	
	200	11	22.00	42 1-2*	12.65	
	100	11	11.00	42 1-2*	6.33	
	50	45	22.50	50*	11.25	
	1000	13 1-2	135.00	45*	74.25	
	300	45	135.00	50*	67.50	
	550	13 1-2	74.25	45*	40.84	
						$2436.10

Dec. 12th, 1898.

Blk.	3000	5	150.00	30*	105.00	
	350	15	52.50	40*	31.50	
	1800	5	90.00	30*	63.00	
	200	25	50.00	45*	27.50	
	1100	5	55.00	30*	38.50	
	192	15	28.80	40*	17.28	
	650	5	32.50	30*	22.75	
Gilts,	50	7	42.00	35*	27.30	
	80	20	16.00	45*	8.80	
	350	7	24.50	35*	15.93	
Blanks,	800	5 1-2	44.00	30*	30.80	
	200	25	50.00	45*	27.50	
	450	5 1-2	24.75			

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	1000	5 1-2	55.00	30*	55.83
	250	25	62.50	45*	34.37
	1600	5 1-2	88.00	30*	61.60
Golds, 12 oz.	200	15	30.00	40*	18.00
1 Bd. Bld. Bdr.	50	50	25.00	50*	12.50
	100	11	11.00	42 1-2*	6.33
	400	16	64.00		
	132	50	66.00	50*	65.00
	220	11	24.20	42 1-2*	13.92
Blanks,	1600	5 1-2	88.00	30*	61.60
	400	25	100.00	45*	55.00
	2000	5 1-2	110.00	30*	77.00
	300	25	75.00	45*	41.25
	2200	5 1-2	121.00	30*	84.70
	400	25	100.00	45*	55.00
	2400	5 1-2	132.00	30*	92.40
	400	25	100.00	45*	55.00
	2000	5 1-2	110.00	30*	77.00
	300	25	75.00	45*	41.25
	1800	5 1-2	99.00	30*	69.30
	300	25	75.00	45*	41.25
	600	5 1-2	33.00	30*	23.10
Gilts,	800	8	64.00	37 1-2*	40.00
	200	35	70.00	45*	38.50

Thomas & Davis Co.—Cont.

	400	8	32.00	37 1-2*	20.00	
	1000	8	80.00	37 1-2*	50.00	
	250	35	87.50	45*	48.12	
	500	8	40.00	37 1-2*	25.00	
	900	7	63.00	35*	40.95	
	100	20	20.00	45*	11.00	
	1350	7	94.50	35*	61.43	
	100	20	20.00	45*	11.00	
	450	7	31.50	35*	20.48	
	110	13 1-2	14.85	45*	8.17	
						$1831.91

Dec. 29, 1898.

Blanks,	150	5	7.50	30*	5.25	
	20	15	3.00	40*	1.80	
	100	5	5.00			
	150	5 1-2	8.25	30*	9.28	
	40	25	10.00	45*	5.50	
	1100	5 1-2	60.50	30*	42.35	
	250	25	62.50	45*	34.38	
	600	5 1-2	33.00	30*	23.10	
Gilt,	250	8	20.00	37 1-2*	12.50	
	60	35	21.00	45*	11.55	
	350	8	28.00	37 1-2*	17.50	

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Thomas & Davis Company—Cont.

	50	35	17.50	45*	9.63	
	100	8	8.00	37 1-2*	5.00	
Embossed,	1600	11	176.00	42 1-2*	101.20	
1 B. B. B.	450	45	202.50	50*	101.25	
	900	12 1-2	112.50	45*	61.88	
	450	45	202.50	50*	101.25	
	900	13 1-2	121.50	45*	66.83	
						$610.25

Jan. 31st, 1899.

Blank,	450	5	22.50	30*	15.75	
	60	15	9.00	40*	5.40	
	3300	5	165.00	30*	115.50	
	360	15	54.00	40*	32.40	
	4600	5	230.00	30*	161.00	
	360	15	54.00	40*	32.40	
	1600	5	80.00			
	1800	5 1-2	99.00	30*	125.30	
	500	25	125.00	45*	68.75	
	1000	5 1-2	55.00	30*	38.50	
Gilt,	750	8	60.00	37 1-2*	37.50	
	190	35	66.50	45*	36.58	
	1050	8	84.00	37 1-2*	52.50	
	150	35	52.50	45*	28.88	

Thomas & Davis Company—Cont.

	400	8		32.00	37 1-2*	20.00
Blank,	36	25		9.00	45*	4.95
	100	5	1-2	5.50	30*	3.85
	24	25		6.00	45*	3.30
	750	5	1-2	41.25	30*	28.88
	180	25		45.00	45*	24.75
	3400	5	1-2	187.00	30*	130.90
	800	25		200.00	45*	110.00
	4800	5	1-2	261.00	30*	184.80
	1050	25		262.50	45*	144.38
	1800	5	1-2	99.00	30*	69.30
Gilts,	200	11		22.00	42 1-2*	12.65
12 oz.	50	40		20.00	50*	10.00
	1400	10		140.00	42 1-2*	80.50
	300	40		120.00	50*	60.00
	700	10		70.00	42 1-2*	40.25
	150	13	1-2	20.25	45*	11.14
	90	45		40.50	50*	20.25
	100	13	1-2	13.50	45*	7.43
Blank,	1200	5		60.00	30*	42.00
	290	15		43.50	40*	26.10
	1610	5		80.50	30*	56.35
	100	15		15.00	40*	9.00
						$1851.24

Thomas & Davis Company—Cont.

Jan. 31st, 1899.

Blanks,	2250	5	112.00	30*	78.75	
Gilts, 10 oz.	1000	7	70.00	35*	45.50	
	120	20	24.00	45*	13.20	
	500	7	35.00	35*	22.75	
Emb. 12 oz.	1600	11	176.00	42 1-2*	101.20	
Gilt,	400	7	28.00	35*	18.20	
	64	20	12.80	45*	7.04	
	1412	7	98.84	35*	64.25	
	144	20	28.80	45*	15.84	
	770	7	53.90	35*	35.04	
	20	20	4.00	45*	2.20	
	50	7	3.50	35*	2.28	
12 oz.	1000	10	100.00	42 1-2*	57.50	
	250	40	100.00	50*	50.00	
	600	10	60.00	42 1-2*	34.50	
	52	20	10.40	45*	5.72	
	100	7	7.00	35*	4.55	
	46	20	9.20	45*	5.06	
						$563.58

Feb. 25th.

Blank,	300	5	15.00	30*	10.50	

Thomas & Davis Company—Cont.

	60	15	9.00	40*	5.40
	400	5	20.00		
	2710	5 1-2	149.05	30*	118.34
	810	25	202.50	45*	111.38
	2200	5 1-2	121.50	30*	84.70
	150	25	37.50	45*	20.63
	400	5 1-2	22.00	30*	15.40
Gilt,	1600	8	128.00	37 1-2*	80.00
	336	35	117.60	45*	64.68
	750	8	60.00	37 1-2*	37.50
	28	35	9.80	45*	5.39
	100	8	8.00	37 1-2*	5.00
Blank,	250	5 1-2	13.75	30*	9.63
	150	25	37.50	45*	20.63
	50	5 1-2	2.75	30*	1.93
Gilts,	500	11	55.00	42 1-2*	31.63
	12	40	4.80	50*	2.40
	300	10	30.00	42 1-2*	17.25
Embossed,	110	13 1-2	14.85		
Blank,	250	25	62.50	45*	42.55
	50	5 1-2	2.75	30*	1.93
Gilt,	1000	7	70.00	35*	45.50
	40	20	8.00	45*	4.40
	620	7	43.40	35*	28.21

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Thomas & Davis Co.—Cont.

Blank,	42	15	6.30	40*	3.78	
Gilt,	20	20	4.00	45*	2.20	
	600	7	42.00	35*	27.30	
	12	20	2.40	45*	1.32	
	100	7	7.00	35*	4.55	
	10	20	2.00	45*	1.10	
	700	15	105.00			
	170	50	85.00	50*	95.00	
	410	11	45.10	42 1-2*	25.94	
						$926.17

March 6th, 1899.

Blank,	1200	5 1-2	66.00	30*	46.20	
	174	25	43.50	45*	23.93	
	760	5 1-2	41.80	30*	29.26	
Gilts,	150	35	52.50	45*	28.88	
	250	8	20.00	37 1-2*	12.50	
	108	40	43.20	50*	21.60	
	174	10	17.40	42 1-2*	10.01	
						$172.38

March 16th.

Gilts,	250	16	40.00			
	50	50	25.00	50*	32.50	

THE LEWIS VOIGHT & SONS CO.

RTICAL IN BOOK

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Thomas & Davis Co.—Cont.

	100	11	11.00	42 1-2*	6.33	$38.83
			March 18th.			
Gilts,	14	35	4.90	45*	2.70	$2.70
			March 20th.			
Gilts,	50	35	17.50	45*	9.63	$9.63
			March 21st.			
Gilts,	1000	8	80.00	37 1-2*	50.00	
	400	35	140.00	45*	84.00	
	600	8	48.00	37 1-2*	30.00	$164.00
			March 29th.			
Gilts,	200	15	30.00			
	50	50	25.00	50*	27.50	
	100	11	11.00	42 1-2*	6.33	$33.83
			April 8th (18th).			
Gilts,	16	7	1.12	35*	.73	

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Thomas & Davis Co.—Cont.

Blank,	3000	5 1-2	165.00	30*	115.50
	600	25	150.00	45*	82.50
	1800	5 1-2	99.00	30*	69.30
Emb. Gilt,	28	45	12.60	50*	6.30
Blank,	406	5	20.30	30*	14.21
	26	15	3.90	40*	2.34
	250	5 1-2	13.75	30*	9.63
	50	25	12.50	45*	6.88
	250	5 1-2	13.75	30*	9.63
	112	25	28.00	45*	15.40
	50	5 1-2	2.75	30*	1.93
	12	25	3.00	45*	1.65
	80	5 1-2	4.40	30*	3.08
	8	25	2.00	45*	1.10
	200	5 1-2	11.00	30*	7.70
	40	15	6.00	40*	3.60
	200	5 1-2	11.00	30*	7.70
Gilt,	50	8	4.00	37 1-2*	2.50
Blank,	20	15	3.00	40*	1.80
Gilt,	4	8	.32	37 1-2*	.20
	53	20	10.60	45*	5.83
	400	11	44.00	42 1-2*	25.30
	4	20	.80	45*	.44
	100	10	10.00	42 1-2*	5.75

RTICAL IN BOOK

Thomas & Davis Co.—Cont.

	82	20	16.40	45*	9.02	
	60	7	4.20	35*	2.73	
	14	50	7.00	50*	3.50	
	140	11	15.40	42 1-2*	8.86	
Blank,	62	15	9.30	40*	5.58	
	400	5 1-2	22.00	30*	15.40	
	22	20	4.40	45*	2.42	
	150	7	10.50	35*	6.83	
						$455.34

April 10th, 1899.

Blank,	2400	5	120.00	30*	84.00	
	30	15	4.50	40*	2.70	
	4000	5	200.00	30*	140.00	
	330	15	49.50	40*	29.70	
	3800	5	190.00	30*	133.00	
	150	15	22.50	40*	13.50	
	994	5	49.70			
	400	5 1-2	22.00	30*	50.19	
	100	25	25.00	45*	13.75	
	300	5 1-2	16.50	30*	11.55	
Gilt,	2600	8	208.00	37 1-2*	130.00	
	250	35	87.50	45*	48.13	
	220	35	77.00	45*	42.35	

THIS PAGE BOUND VERTI

Thomas & Davis Co.—Cont.

	600	8	48.00	37 1-2*	30.00	
Emb. Gilt,	30	45	13.50	50*	6.75	
	110	13 1-2	14.85	45*	8.17	
						$743.79
			May 16th.			
Blank,	50	5 1-2	2.75	30*	1.93	
	14	25	3.50	45*	1.93	
	650	5 1-2	35.75			
	150	5 1-2	8.25	30*	30.80	
	100	8	8.00	37 1-2*	5.00	
	28	35	9.80	45*	5.39	
	52	8	4.16	37 1-2*	2.60	
	1050	5 1-2	57.75	30*	40.43	
	18	15	2.70	40*	1.62	
						$89.70
			June 9th.			
Blank,	66	15	9.90	40*	5.94	
						$5.94
			June 13th.			
Emb. Gilt,	100	13 1-2	13.50	45*	7.43	
Blank,	100	5	5.00	30*	3.50	

THE LEWIS VOIGHT & SONS CO.

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Thomas & Davis Co.—Cont.

14	15	2.10	40*	1.26	
6	25	1.50	45*	.83	
200	5 1-2	11.00	30*	7.70	
6	25	1.50	45*	.83	
100	5 1-2	5.50	30*	3.85	
100	25	25.00	45*	13.75	
250	5 1-2	13.75	30*	9.63	
100	15	15.00	40*	9.00	
30	8	2.40	37 1-2*	1.50	
6	45	2.70	50*	1.35	
150	7	10.50	35*	6.83	
18	20	3.60	45*	1.98	
					$69.44
Total,					$10004.83

Williamson Wall Paper Co.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.
			Dec. 7th, 1898.		
12 oz. Bronze,	1650	18	297.00		

THIS PAGE BOUND VERTI

AL IN BOOK

Williamson Wall Paper Co.—Cont.

	450	55	247.50			
	1050	15	157.50			
	1604	16	256.64			
	450	50	225.00			
	1050	15	157.50	50*	670.57	
	50	13 1-2	6.75	45*	3.72	
	12	45	5.40	50*	2.70	
	26	12	3.25	45*	1.79	
Blank,	600	6 1-2	39.00	32 1-2*	26.33	
	80	18	14.40	45*	7.92	
	350	6	21.00	27 1-2*	15.23	
	50	5 1-2	2.75	30*	1.93	
	6	15	.90	40*	.54	
	32	5 1-2	1.76	30*	1.24	
	150	5 1-2	8.25	30*	5.78	
	150	25	37.50	40*	22.50	
	150	5 1-2	8.25	30*	5.78	
						$766.03
			Dec. 28th.			
Ingrain,	200	12 1-2	25.00	30	17.50	
	40	55	22.00	50*	11.00	
	50	15	7.50	50*	3.75	
	54	18	9.72	50*	4.86	

	2200	12 1-2	275.00	30	192.50	
	520	55	286.00	50*	143.00	
	1100	15	165.00	50*	82.50	
	50	18	9.00	50*	4.50	
Blank,	50	6	3.00	30*	2.10	
	12	28	3.36	45*	1.85	
	30	6	1.80	30*	1.26	
	1200	6 1-2	18.00	32 1-2*	52.65	
	160	18	28.80	45*	15.84	
	1700	6	102.00	30*	71.40	
	120	18	21.60	45*	11.88	
	600	5 1-2	33.00	30*	23.10	
						$639.69
			Dec. 28th.			
Blank,	50	6 1-2	3.25	32 1-2*	2.20	
	50	28	14.00	45*	7.70	
	50	6 1-2	3.25	32 1-2*	2.20	
						$12.10
			Dec. 30th.			
Ing.	370	55	203.50			
	900	15	135.00			
	66	18	11.88	50*	175.19	

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Williamson Wall Paper Co.—Cont.

Blank,	2966	6 1-2	192.79	32 1-2*	130.14	
	800	28	224.00	45*	123.20	
	3206	6 1-2	208.39	32 1-2*	140.67	
	506	28	141.68	45*	77.93	
	1070	6 1-2	69.55	32 1-2*	46.95	
						$694.08

Feb. 3rd, 1899.

Ingrains,	120	12 1-2	15.00	30	10.50	
Wht. Blk.	184	6 1-2	11.96	32 1-2*	8.08	
	544	28	152.32	45*	83.78	
	130	6 1-2	8.45	32 1-2*	5.71	
	900	5 1-2	49.50	30*	34.65	
	226	25	56.50	45*	31.08	
	622	5 1-2	34.21	30*	23.95	
	6	25	1.50	45*	.83	
	26	5 1-2	1.43	30*	1.01	
12 oz. Bzes.	400	11	44.00	42 1-2*	25.30	
	100	40	40.00	50*	20.00	
	250	10	25.00	42 1-2*	14.38	
Wht. Blk.	600	6	36.00	30*	25.20	
	72	18	12.96	45*	7.13	
	350	5 1-2	19.25	30*	13.48	
	1000	6 1-2	65.00	32 1-2*	43.88	

AL IN BOOK

	120	18	21.60	45*	11.88	
	600	6 1-2	39.00	32 1-2*	26.33	
	800	5 1-2	44.00	30*	30.80	
	100	15	15.00	40*	9.00	
	500	5 1-2	27.50	30*	19.25	
	600	7	42.00	35*	27.30	
10 oz. Bzes.	84	20	16.80	45*	9.24	
	304	7	21.28	35*	13.84	
	100	5 1-2	5.50	30*	3.85	
Wht. Blks.	16	15	2.40	40*	1.44	
	62	5	3.10			
	250	6	15.00	30*	12.67	
	64	28	17.92	45*	9.86	
	142	5 1-2	7.81	30*	5.47	
	9466	5 1-2	520.63	30*	364.45	
	2150	25	537.50	45*	295.63	
	5450	5 1-2	299.75	30*	209.83	
	26	18	4.68			
12 oz. Bzes.	6	55	3.30	50*	3.99	
	16	13 1-2	2.16			
	74	13 1-2	9.99	45*	6.69	
	20	45	9.00	50*	4.50	
	44	11	4.84	42 1-2*	2.79	
						$1417.77

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ICAL IN BOOK

Williamson Wall Paper Co.—Cont.

Feb. 24th.

20—212 Ingrains,	406	12 1-2	50.75	30	35.53	
	222	50	111.00			
	600	15	90.00	50*	100.50	
	174	12 1-2	21.75	30	15.23	
	38	50	19.00	50*	22.70	
	176	15	26.40			
	300	12 1-2	37.50	30	26.25	
White Blks.	200	7	14.00	35*	9.10	
	36	28	10.08	45*	5.55	
	330	6	19.80	30*	13.86	
						$228.72
White, Blks.	52	28	14.56	45*	8.01	
	476	6	28.56	30*	20.00	
	80	28	22.40	45*	12.32	
	280	6	16.80	30*	11.76	
	28	28	7.84	45*	4.31	
	56	6	3.36	30*	2.35	
	650	6 1-2	42.25	32 1-2*	28.52	
	80	18	14.40	45*	7.92	
	700	6	42.00	30*	29.40	
	50	18	9.00	45*	4.95	
	400	5 1-2	22.00	30*	15.40	

Williamson Wall Paper Co.—Cont.

	26	15	3.90	40*	2.34	
	130	5	6.50			
	50	6	3.00	30*	6.65	
	14	28	3.92	45*	2.16	
	26	5 1-2	1.43	30*	1.00	
						$206.04
			March 3rd.			
12 oz. Bronze,	300	18	54.00			
	80	55	44.00	50*	49 00	
	180	13 1-2	24.30			
	284	13 1-2	38.34	45*	34.45	
	70	45	31.50	50*	15.75	
	168	12 1-2	21.00	45*	11.55	
Ingrains,	400	12 1-2	50.00	30	35.00	
	120	60	72.00	55*	32.40	
	150	15	22.50	50*	11.25	
	150	12 1-2	18.75	30	13.13	
	26	60	15.60	55*	7.02	
	80	15	12.00	50*	6.00	
						$215.55
			March 6th.			
Ingrains,	26	12 1-2	3.25	30	2.28	

THIS PAGE BOUND

Williamson Wall Paper Co.—Cont.

	6	50	3.00			
	22	15	3.30	50*	3.15	
						$5.43
			March 16th.			
Ingrains,	260	55	143.00			
	650	15	97.50	50*	120.25	
	300	12 1-2	37.50	30	26.25	
	42	55	23.10			
	134	15	20.10	50*	21.60	
Blank,	12	25	3.00	45*	1.65	
						$169.75
			March 30th.			
12 oz. Bronze	58	50	29.00			
	76	55	41.80			
	100	15	15.00	50*	42.90	
						$42.90
			April 1st.			
12 oz. Bronze,	26	55	14.30	50*	7.15	
						$7.15
			April 3d.			
Ing.	12	55	6.60	50*	3.30	
						$3.30

ERTICAL IN BOOK

Williamson Wall Paper Co.—Cont.

April 17th, 1899

W. Blank,	20	28	5.60	45*	3.08	
	150	6 1-2	9.75	32 1-2*	6.58	
	200	25	50.00	45*	27.50	
	100	5 1-2	5.50	30*	3.85	
12 oz. Bronze,	10	50	5.00			
	80	15	12.00			
	74	18	13.32			
	12	55	6.60	50*	18.46	
	50	13 1-2	6.75	45*	3.71	
	1022	18	183.96			
	272	55	149.60			
	576	15	86.40	50*	209.98	
Ingrain,	400	12 1-2	50.00	30*	35.00	
	250	15	37.50			
	148	55	81.40			
	250	15	37.50	50*	78.20	
						$386.36

April 20th.

Blank,	200	6 1-2	13.00	32 1-2*	8.78	
	100	6	6.00			
	60	6	3.60			

THIS PAGE BOUND VER

Williamson Wall Paper Co.—Cont.

	80	5 1-2	4.40			
	90	5 1-2	4.95	30*		
Ing.	50	12 1-2	6.25	30	17.64	
	20	15	3.00			
	90	15	13.50			
	26	55	14.30	50*	15.40	
						$41.82
			May 23rd.			
W. Blank,	1544	6 1-2	100.36	32 1-2*	67.74	
	208	18	37.44	45*	20.59	
	772	6	46.32	30*	32.42	
	500	25	125.00	45*	68.75	
	1100	5 1-2	60.50	30*	42.35	
	2000	5 1-2	110.00	30*	77.00	
	150	6 1-2	9.75	32 1-2*	6.58	
	12	28	3.36	45	1.85	
						$317.28
			June 20th.			
Blank,	250	6 1-2	16.25	32 1-2*	10.97	
12 oz. Bronze,	22	50	11.00			
	150	18	27.00			
	6	40	2.40			

Williamson Wall Paper Co.—Cont.

	8	55	4.40	50	22.40	
						$33.37
Total,						$5187.34

York Card & Paper Company.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.	
			Oct. 11th, 1898.			
Whites, 9 oz.	1800	5	90.00	30	63.00	
Bor. 10 oz.	172	15	25.80	40	15.48	
Whites 9 oz.	2000	5	100.00	30	70.00	
Bor. 10 oz.	200	15	30.00	40	18.00	
Whites 9 oz.	2000	5	100.00	30	70.00	
Bor. 10 oz.	200	15	30.00	40	18.00	
Whites 9 oz.	2500	5	125.00	30	87.50	
Bor. 10 oz.	250	15	37.50	40	22.50	
						$364.48
			Oct. 19th.			
Whites 9 oz.	200	5	10.00	30*	7.00	

THIS PAGE BOUND VERT

York Card & Paper Co.—Cont.

Bord. 10 oz.	28	15	4.20	40*	2.52	$9.52
			Nov. 2nd.			
Bord. 10 oz.	2	25	.50	40	.30	$ .30
			Nov. 8th.			
9 oz. Whites,	650	5	32.50	30*	22.75	
10 oz. Bdr.	48	15	7.20	40*	4.32	
9 oz. Whites,	80	5	4.00	30*	2.80	
12 oz. Bord.	8	18	1.44	45*	.79	
9 oz. Whites,	1800	5 1-2	99.00	30*	69.30	
10 oz. Bord.	160	18	28.80	45*	15.84	
9 oz. Whites,	82	5 1-2	4.51	30*	3.16	
10 oz. Bord.	6	18	1.08	45*	.59	
9 oz. Whites,	100	5 1-2	5.50	30*	3.85	
10 oz. Bord.	6	18	1.08	45*	.59	
9 oz. Whites,	3000	5 1-2	165.00	30*	115.50	
10 oz. Bord.	300	18	54.00	45*	29.70	
9 oz. Whites,	80	5 1-2	4.40	30*	3.08	
10 oz. Bord.	12	25	3.00	45*	1.65	
9 oz. Whites,	100	5 1-2	55.00	30*	3.85	
10 oz. Bord.	12	25	3.00	45*	1.65	

RTICAL IN BOOK

York Card & Paper Co.—Cont.

9 oz. Whites,	1000	5 1-2	55.00	30*	38.50	
10 oz. Bord.	160	25	40.00	45*	22.00	
9 oz. Whites,	2600	5 1-2	143.00	30*	100.10	
10 oz. Bord.	400	25	100.00	45*	55.00	
9 oz. Whites,	1000	5 1-2	55.00	30*	38.50	
10 oz. Bord.	150	25	37.50	45*	20.63	
9 oz. Whites,	76	5 1-2	4.18	30*	2.93	
10 oz. Bord.	12	25	3.00	45*	1.65	
9 oz. Whites,	3600	5 1-2	198.00	30*	138.60	
10 oz. Bord.	650	25	162.50	45*	89.38	
9 oz. Whites,	100	5 1-2	5.50	30*	3.85	
10 oz. Bord.	24	25	6.00	45*	3.30	
9 oz. Whites,	2900	6	174.00	30*	121.80	
10 oz. Bord.	450	28	126.00	45*	69.30	
10 oz. Bord.	650	25	162.50	45*	89.38	
						$1074.34

Nov. 8th, 1898.

Glim. 10 oz.	3000	7 1-2	225.00	35*	146.25	
	2000	6	120.00	30*	84.00	
12 oz. Bdr.	800	30	240.00	45*	132.00	
10 oz. Golds,	450	10	45.00	40*	27.00	
	200	9	18.00	40*	10.80	
12 oz. Bdr.	150	40	60.00	50*	30.00	

THIS PAGE BOUND VER

York Card & Paper Co.—Cont.

10 oz. Golds,	50	11	5.50	40*	3.30	
	24	9	2.16	40*	1.30	
12 oz. Bdr.	12	40	4.80	50*	2.40	
12 oz. Var. Golds,	950	11	104.50	42 1-2*	60.09	
12 oz. Bdr.	150	40	60.00	50*	30.00	
12 oz. Golds,	450	12 1-2	56.25	45*	30.94	
	200	10	20.00	42 1-2*	11.50	
12 oz. Bdr.	120	45	54.00	50*	27.00	
12 oz. Golds,	850	12 1-2	106.25	45*	58.44	
12 oz. Ceil.	400	10	40.00	42 1-2*	23.00	
12 oz. Bdr.	250	45	112.50	50*	56.25	
12 oz. Var. Golds,	1550	12 1-2	193.75	45*	106.56	
12 oz. Bdr.	300	45	135.00	50*	67.50	
12 oz. Var. Golds,	650	12 1-2	81.25	45*	44.69	
12 oz. Bdr.	90	45	40.50	50*	20.25	
Var. Golds,	20	13 1-2	2.70	45*	1.49	
	16	12 1-2	2.00	45*	1.10	
12 oz. Bdr.	6	40	2.40	50*	1.20	
Var. Golds,	750	13 1-2	101.25	45*	55.69	
	450	11	49.50	42 1-2*	29.46	
12 oz. Bdr.	200	45	90.00	50*	45.00	
						$1107.21

Nov. 17th.

14 oz. Emb. Gold,	14	18	2.52	50*	1.26	

VERTICAL IN BOOK

York Card & Paper Co.—Cont.

Ceil. 12 oz.	8	13 1-2	1.08	45*	.60	
Bord. 14 oz.	3	55	1.65	50*	.83	
						$2.69
			Nov. 19th.			
9 oz. Whites,	600					
9 oz. Ceil.	550	5	57.50	30*	40.25	
10 oz. Bdr.	60	18	10.80	45*	5.94	
9 oz. Whites,	200					
9 oz. Ceil.	126	5	16.30	30*	11.41	
10 oz. Bdr.	26	18	4.68	45*	2.58	
9 oz. Whites,	400	5	20.00	30*	14.00	
10 oz. Bdr.	78	18	14.04	45*	7.73	
9 oz. Whites,	50	5	2.50	30*	1.75	
9 oz. Whites,	650					
9 oz. Ceil.	250	5 1-2	49.50	30*	34.65	
10 oz. Bdr.	80	18	14.40	45*	7.92	
9 oz. Whites,	600					
9 oz. Ceil.	300	5 1-2	49.50	30*	34.65	
10 oz. Bdr.	80	18	14.40	45*	7.92	
9 oz. Whites,	150					
9 oz. Ceil.	80	5 1-2	12.65	30*	8.86	
10 oz. Bdr.	20	18	3.60	45*	1.98	
						$179.64

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York Card & Paper Co.—Cont.

Nov. 19, 1898.

9 oz. Whites,	200				
9 oz. Ceil.	110	5 1-2	17.05	30*	11.94
10 oz. Bdr.	52	25	13.00	45*	7.15
9 oz. Whites,	350				
9 oz. Ceil.	220	5 1-2	31.25	30*	21.95
10 oz. Bdr.	88	25	22.00	45*	12.10
9 oz. Whites,	200				
9 oz. Ceil.	130	5 1-2	18.15	30*	12.71
10 oz. Bdr.	48	25	12.00	45*	6.60
9 oz. Whites,	1000	6	60.00	30*	42.00
9 oz. Ceil.	600	5 1-2	33.00	30*	23.10
10 oz. Bdr.	130	22	28.60	45*	15.73
9 oz. Whites,	150				
9 oz. Ceil.	106	6	15.36	30*	10.76
10 oz. Bdr.	36	28	10.08	45*	5.55
9 oz. Whites,	100				
9 oz. Ceil.	70	6	10.20	30*	7.14
10 oz. Bdr.	24	28	6.72	45*	3.70
10 oz. Glim.	600	7 1-2	45.00	35*	29.25
10 oz. Ceil.	250	6	15.00	30*	10.50
12 oz. Bdr.	70	25	17.50	45*	9.63
10 oz. Glim.	1200	7 1-2	90.00	35*	58.50

York Card & Paper Company—Cont.

10 oz. Ceil.	800	6	48.00	30*	33.60	
12 oz. Bdr.	150	25	37.50	45*	20.63	
10 oz. Glim.	737	7 1-2	55.27	35*	35.93	
10 oz. Ceil.	400	6	24.00	30*	16.80	
12 oz. Bdr.	200	30	60.00	45*	33.00	
10 oz. Golds,	800	10	80.00	40*	48.00	
10 oz. Ceil.	500	8	40.00	37 1-2*	25.00	
12 oz. Bdr.	200	40	80.00	50*	40.00	
10 oz. Golds,	300	10	30.00	40*	18.00	
10 oz. Ceil.	200	9	18.00	40*	10.80	
12 oz. Bdr.	80	40	32.00	50*	16.00	
10 oz. Golds,	26	10	2.60	40*	1.56	
10 oz. Ceil.	16	9	1.44	40*	.87	
12 oz. Bdr.	6	40	2.40	50*	1.20	
10 oz. Golds,	100	11	11.00	40*	6.60	
10 oz. Ceil.	62	9	5.58	40*	3.35	
12 oz. Bdr.	26	40	10.40	50*	5.20	
12 oz. Golds,	79	11	8.69	42 1-2*	5.00	
						$609.85

Nov. 19th.

12 oz. Ceil.	50	10	5.00	42 1-2*	2.88	
12 oz. Bdr.	20	40	8.00	50*	4.00	
12 oz. Golds,	50	11	5.50	42 1-2*	3.17	

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York Card & Paper Company—Cont.

12 oz. Ceil.	32	10	3.20	42 1-2*	1.84
12 oz. Bdr.	12	40	4.80	50*	2.40
Var. Golds,	1000	11			
12 oz. Ceil.	550	11	170.50	42 1-2*	98.04
12 oz. Bdr.	300	40	120.00	50*	60.00
Var. Golds,	200				
12 oz. Ceil.	120	12 1-2	40.00	45*	22.00
12 oz. Bdr.	60	45	27.00	50*	13.50
12 oz. Golds,	68	13 1-2	9.18	45*	5.05
12 oz. Ceil.	48	11	5.28	42 1-2*	3.04
12 oz. Bdr.	18	45	8.10	50*	4.05
12 oz. Golds,	200	13 1-2	27.00	45*	14.85
12 oz. Ceil.	150	11	16.50	42 1-2*	9.49
12 oz. Bdr.	60	45	27.00	50*	13.50
12 oz. Golds,	1200	13 1-2	162.00	45*	89.10
12 oz. Ceil.	650	11	71.50	42 1-2*	41.12
12 oz. Bdr.	350	45	157.50	50*	78.75
Var. Golds,	438	13 1-2	59.13	45*	32.53
12 oz. Ceil.	255	11	28.05	42 1-2*	16.13
12 oz. Bdr.	104	45	46.80	50*	23.40
Var. Golds,	850	13 1-2	114.75	45*	63.12
12 oz. Ceil.	450	12 1-2	56.25	45*	30.94
12 oz. Bdr.	250	45	112.50	50*	56.25
12 oz. Bdr.	30	35	10.50	45*	5.78

York Card & Paper Company—Cont.

Var. Golds,	50	16	8.00	50*	4.00	
12 oz. Ceil.	26	12 1-2	3.25	45*	1.79	
12 oz. Bdr.	14	45	6.30	50*	3.15	
Var. Golds,	850	16	136.00	50*	68.00	
12 oz. Ceil.	450	12 1-2	56.25	45*	30.94	
12 oz. Bdr.	174	45	78.30	50*	39.15	
Var. Golds,	1250	16	200.00	50*	100.00	
12 oz. Ceil.	650	11	71.50	42 1-2*	41.12	
12 oz. Bdr.	350	50	175.00	50*	87.50	
Var. Golds,	900	16	144.00	50*	72.00	
12 oz. Ceil.	450	12 1-2	56.25	45*	30.94	
12 oz. Bdr.	280	50	140.00	50*	70.00	
Var. Golds,	250	18	45.00	50*	22.50	
12 oz. Ceil.	150	12 1-2	18.75	45*	10.32	
12 oz. Bdr.	60	50	30.00	50*	15.00	
Var. Golds,	1000	18	180.00	50*	90.00	
12 oz. Ceil.	550	12 1-2	68.75	45*	37.82	
12 oz. Bdr.	300	50	150.00	50*	75.00	
						$1494.16

Nov. 28th.

Varn. Gold 12 oz.	24	16	3.84	50*	1.92	
Ceil. 12 oz.	10	12 1-2	1.25	45*	.69	
Bord. 12 oz.	6	50	3.00	50*	1.50	
						$4.11

THIS PAGE BOUND VER

York Card & Paper Company—Cont.

Nov. 30th.

9 oz. Whites,	2000	5	100.00	30*	70.00
10 oz. Bdr.	200	15	30.00	40*	18.00
9 oz. Whites,	1000	5	50.00	30*	35.00
10 oz. Bdr.	100	15	15.00	40*	9.00
9 oz. Whites,	1400	5	70.00	30*	49.00
10 oz. Bdr.	100	18	18.00	45*	9.90
9 oz. Whites,	250	5	12.50	30*	8.75
10 oz. Bdr.	32	18	5.76	45*	3.17
9 oz. Whites,	150	5	7.50	30*	5.25
10 oz. Bdr.	32	18	5.76	45*	3.17
9 oz. Whites,	100	5 1-2	5.50	30*	3.85
10 oz. Bdr.	12	25	3.00	45*	1.65
9 oz. Whites,	2400	5 1-2	132.00	30*	92.40
10 oz. Bdr.	400	25	100.00	45*	55.00
9 oz. Bdr.	600	6	36.00	30*	25.20
	350	5 1-2	19.25	30*	13.47
10 oz. Bdr.	80	22	17.60	45*	9.68
9 oz. Whites,	50				
9 oz. Ceil.	40	6	5.40	30*	3.78
10 oz. Bdr.	8	22	1.76	45*	.96
9 oz. Bdr.	90	6	5.40	30*	3.78
10 oz. Bdr.	8	22	1.76	45*	.96

York Card & Paper Company—Cont.

9 oz. Whites,	80	6	4.80	30*	3.36
10 oz. Bdr.	12	28	3.36	45*	1.84
Glim. 10 oz.	100	7 1-2	7.50	35*	4.87
	66	6	3.96	30*	2.77
12 oz. Bdr.	14	25	3.50	45*	1.92
Glim. 10 oz.	1000	7 1-2	75.00	35*	48.75
	500	6	30.00	30*	21.00
12 oz. Bdr.	150	25	37.50	45*	20.62
10 oz. Glim.	1600	7 1-2	120.00	35*	78.00
	800	6	48.00	30*	33.60
12 oz. Bdr.	200	25	50.00	45*	27.50
Var. Golds,	1500	16	240.00	50*	120.00
	1000	11	110.00	42 1-2*	63.25
12 oz. Bdr.	400	50	200.00	50*	100.00
10 oz. Golds,	1000	10	100.00	40*	60.00
	550	8	44.00	37 1-2*	27.50
12 oz. Bdr.	300	40	120.00	50*	60.00
10 oz. Golds,	1000	10	100.00	40*	60.00
	550	8	44.00	37 1-2*	27.50
12 oz. Bdr.	300	40	120.00	50*	60.00
12 oz. Golds,	350	10	35.00	40*	21.00
	200	8	16.00	37 1-2*	10.00
12 oz. Bdr.	80	40	32.00	50*	16.00
10 oz. Golds,	300	10	30.00	40*	18.00

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CAL IN BOOK

York Card & Paper Company—Cont.

21—212		250	8	20.00	37 1-2*	12.50
	12 oz. Bdr.	76	40	30.40	50*	15.20
	10 oz. Golds,	400	10	40.00	40*	24.00
		300	8	24.00	37 1-2*	15.00
	12 oz. Bdr.	100	40	40.00	50*	20.00
						$1296.15
				Nov. 30th.		
	10 oz. Golds,	400	10	40.00	40*	24.00
		250	8	20.00	37 1-2*	12.50
	12 oz. Bdr.	100	40	40.00	50*	20.00
	10 oz. Golds,	126	10	12.60	40*	7.56
		20	8	1.60	37 1-2*	1.00
	12 oz. Bdr.	28	40	11.20.	50*	5.60
	10 oz. Golds,	800	10	80.00	40*	48.00
		1300	8	104.00	37 1-2*	65.00
	12 oz. Bdr.	200	40	80.00	50*	40.00
	10 oz. Golds,	150	10	15.00	40*	9.00
		150	9	13.50		
	10 oz. Golds,	686	11	75.46		
		400	9	36.00	40*	74.96
	12 oz. Bdr.	174	40	69.60	50*	34.80
	10 oz. Golds,	100	11	11.00	40*	6.60
		68	9	6.12	40*	3.67

York Card & Paper Company—Cont.

12 oz. Bdr.	26	40	10.40	50*	5.20
10 oz. Golds,	50	10	5.00		
	36	9	3.24	40*	4.95
12 oz. Bdr.	14	40	5.60	50*	2.80
12 oz. Golds,	50	11	5.50		
	30	10	3.00	42 1-2*	4.88
12 oz. Bdr.	14	40	5.60	50*	2.80
12 oz. Golds,	50	11	5.50		
	26	10	2.60	42 1-2*	4.65
12 oz. Bdr.	12	40	4.80	50*	2.40
12 oz. Golds,	26	11	2.86		
	16	10	1.60	42 1-2*	2.56
12 oz. Bdr.	6	40	2.40	50*	1.20
12 oz. Golds,	200	10	20.00	42 1-2*	11.50
12 oz. Bdr.	62	45	27.90	50*	13.95
12 oz. Golds,	80	12 1-2	10.00	45*	5.50
12 oz. Bdr.	14	45	6.30	50*	3.15
12 oz. Golds,	850	13 1-2	114.75		
12 oz. Ceil.	450	12 1-2	56.25	45*	94.05
12 oz. Bdr.	250	45	112.50	50*	56.25
12 oz. Golds,	100	13 1-2	13.50		
	50	12 1-2	6.25	45*	10.86
12 oz. Bdr.	26	45	11.70		
12 oz. Golds,	50	15	7.50	50*	9.60

THIS PAGE BOUND VERTI

York Card & Paper Co.—Cont.

12 oz. —	32	13 1-2	4.32	45*	2.38	
12 oz. Bdr.	12	50	6.00			
14 oz. Emb. Gold,	100	15	15.00	50*	10.50	
12 oz. Ceil.	50	12 1-2	6.25	45*	3.44	
14 oz. Bdr.	26	50	13.00			
14 oz. Emb. Gold,	200	18	36.00	50*	24.50	
	120	13 1-2	16.20	45*	8.91	
14 oz. Bdr.	56	55	30.80			
14 oz. Emb. Gold,	900	18	162.00	50*	96.40	
	450	13 1-2	60.75	45*	33.41	
14 oz. Bdr.	280	55	154.00			
14 oz. Emb. Gold,	850	18	153.00	50*	153.50	
	450	13 1-2	60.75	45*	33.41	
14 oz. Bdr.	250	55	137.50			
14 oz. Emb. Golds,	50	18	9.00	50*	73.25	
						$1128.69

Nov. 30th, 1898.

14 oz. Gold,	30	13 1-2	4.05	45*	2.23	
14 oz. Bdr.	12	55	6.60	50*	3.30	
						$5.53

December 22nd.

Glim. 10 oz.	22	10	2.20	37 1-2*	1.38	

York Card & Paper Co.—Cont.

	10	7 1-2	.75	35*	.49	
	6	35	2.10	45*	1.16	
						$3.03

December 30th.

Wht.	50	5	2.50	30*	1.75	
	6	15	.90	40*	.54	
	2000	5	100.00	30*	70.00	
	100	15	15.00	40*	9.00	
	1000	5	50.00	30*	35.00	
	176	15	26.40	40*	15.84	
	450	5	22.50	30*	15.75	
	36	18	6.48	45*	3.57	
	12.50	5	62.50	30*	43.75	
	100	18	18.00	45*	9.90	
	600	5	30.00	30*	21.00	
	76	18	13.68	45*	7.53	
	150	5 1-2	8.25	30*	5.78	
	14	18	2.52	45*	1.39	
	950	5 1-2	52.25	30*	36.58	
	80	18	14.40	45*	7.92	
	1950	5 1-2	107.25	30*	75.08	
	170	18	30.60	45*	16.83	

THIS PAGE BOUND VERTI

York Card & Paper Co.—Cont.

	512	5 1-2	28.16	30*	19.72	
	66	25	16.50	45*	9.08	
	2300	5 1-2	126.50	30*	88.55	
	360	25	90.00	45*	49.50	
	360	6	21.60	30*	15.12	
	28	22	6.16	45*	3.39	
	150	6	9.00	30*	6.30	
	14	22	3.08	45*	1.70	
	300	6	18.00			
	180	5 1-2	9.90	30*	19.53	
	40	22	8.80	45*	4.48	
	838	7	58.66	35*	38.14	
	600	6	36.00	30*	25.20	
	210	28	58.80	45*	32.34	
						$689.62

December 30, 1898, Cont.

Glim. 10 oz.	800	7 1-2	60.00	35*	39.00	
	450	6	27.00	30*	18.90	
	100	25	25.00	45*	13.75	
	600	7 1-2	45.00	35*	29.25	
	450	6	27.00	30*	18.90	
	84	25	21.00	45*	11.55	

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York Card & Paper Co.—Cont.

	1500	7 1-2	112.50	35*	73.13
	900	6	54.00	30*	37.80
	200	25	50.00	45*	27.50
	600	7 1-2	45.00	35*	29.25
	350	6	21.00	30*	14.70
	162	25	40.50	45*	22.28
	3200	8	256.00	37 1-2*	160.00
	1950	6 1-2	126.75	32 1-2*	85.56
	786	30	235.80	45*	129.69
	572	10	57.20	37 1-2*	35.75
	360	7 1-2	27.00	35*	17.55
	150	35	52.50	45*	28.88
	550	10	55.00	37 1-2*	34.38
	360	7 1-2	27.00	35*	17.55
	120	35	42.00	45*	23.10
	82	9	7.38	40*	4.43
	48	7 1-2	3.60	35*	2.34
	20	30	6.00	45*	3.30
Flat 12 oz.	3200	10	320.00	37 1-2*	200.00
	580	35	203.00	45*	111.65
	1420	10	142.00	37 1-2*	88.75
	274	35	95.90	45*	52.75
Gold 10 oz.	100	10	10.00	40*	6.00

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York Card & Paper Co.—Cont.

	60	8	4.80	37 1-2*	3.00	
	26	40	10.40	50*	5.20	
	200	10	20.00	40*	12.00	
	120	8	9.60	37 1-2*	6.00	
	50	40	20.00	50*	10.00	
	400	10	40.00	40*	24.00	
	250	8	20.00	37 1-2*	12.50	
	100	40	40.00	50*	20.00	
	500	11	55.00			
	300	9	27.00	40*	49.20	
	130	40	52.00	50*	26.00	
	26	9	2.34	40*	1.41	
						$1,507.00

December 30th, 1898, Cont.

Gold 12 oz.	400	12 1-2	50.00	45*	27.50	
	250	10	25.00	42 1-2*	14.38	
	100	45	45.00	50*	22.50	
	120	13 1-2	16.20	45*	8.91	
	72	10	7.20	42 1-2*	4.14	
	30	45	13.50	50*	6.75	
	22	13 1-2	2.97	45*	1.64	
	14	10	1.40	42 1-2*	.81	

York Card & Paper Co.—Cont.

6	45	2.70	50*	1.35
80	12 1-2	10.00	45*	5.50
12	45	5.40	50*	2.70
300	12 1-2	37.50	45*	20.63
50	45	22.50		
100	15	15.00	50*	18.75
50	13 1-2	6.75	45*	3.72
20	50	10.00		
50	15	7.50	50*	8.75
30	13 1-2	4.05	45*	2.23
14	50	7.00		
100	18	18.00	50*	12.50
62	12 1-2	7.75	45*	4.27
1000	16	160.00	50*	86.50
26	50	13.00		
830	11	91.30	42 1-2*	52.50
284	50	142.00		
200	16	32.00	50*	87.00
270	12 1-2	33.75	45*	18.57
104	50	52.00	50*	26.00
262	13 1-2	35.37	45*	19.46
156	11	17.16	42 1-2*	9.87
66	45	29.70		

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York Card & Paper Co.—Cont.

	250	18	45.00	50*	37.35
	270	12 1-2	33.75	45*	18.57
	126	50	63.00		
	150	16	24.00		
	180	45	81.00	50*	84.00
	100	11	11.00	42 1-2*	6.33
	50	40	20.00	50*	10.00
	230	12 1-2	28.75	45*	15.82
	50	45	22.50	50*	11.25
14 Emb. Gold,	250	18	45.00	50*	22.50
	150	13 1-2	20.25	45*	11.14
	60	55	33.00		
	1100	15	165.00	50*	99.00
	596	12 1-2	74.50	45*	40.98
	314	50	157.00		
	100	15	15.00	50*	86.00
	70	12 1-2	8.75	45*	4.82
	24	50	12.00		
	50	15	7.50	50*	9.75
	30	12 1-2	3.75	45*	2.07
	12	50	6.00		
	200	15	30.00	50*	18.00
	150	12 1-2	18.75	45*	10.32

York Card & Paper Co.—Cont.

	48	50	24.00			
	50	18	9.00	50*	16.50	
	32	12 1-2	4.00	45*	2.20	
	12	55	6.60	50*	3.30	
						$976.83
			Dec. 30th, 1898.			
12 oz. Golds,	200	12 1-2	25.00	45*	13.75	
						$13.75
			Jan. 9th, 1899.			
	200	12 1-2	25.00	45*	13.75	
						$13.75
			Jan. 24th.			
Wht.	3686	5 1-2	202.73	30*	141.91	
	58	18	10.44			
	1056	25	264.00	45*	150.94	
	6304	6	378.24	30*	264.77	
	132	22	29.04			
	732	28	204.96	45*	128.70	
Glim. 10 oz.	300	7 1-2	22.50	35*	14.63	
	110	25	27.50	45*	15.13	

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York Card & Paper Co.—Cont.

Gold, 10 oz.	1272	9	114.48	40*	68.69	
	112	35	39.20	45*	21.56	
Gold 12 oz.	3456	10	345.60	42 1-2*	198.72	
Gold 10 oz.	1664	8	133.12	37 1-2	83.20	
	1050	40	420.00	50*	210.00	
Gold 12 oz.	1261	11	138.71	42 1-2	79.76	
	838	12 1-2	104.75	45*	57.62	
	421	45	189.45	50*	94.73	
	774	13 1-2	104.49			
Emb. Gold 14 oz.	60	13 1-2	8.10	45*	61.93	
	18	45	8.10			
	234	18	42.12			
	58	55	31.90			
	850	18	153.00			
	250	55	137.50			
	1050	18	189.20			
	324	55	178.20			
Gold 12 oz.	706	18	127.08			
	200	50	100.00	50*	483.45	
	1524	13 1-2	205.74	45*	113.16	
Flat 12 oz.	3050	10	305.00	37 1-2*	190.63	
						$2379.53

Jan. 31st.

White 9 oz.	4035	5 1-2	221.93	30*	155.36	

York Card & Paper Co.—Cont.

	12	25	3.00	45*	1.65	
	2114	6	126.84	30*	88.79	
	188	28	52.64	45*	28.96	
Glim.	1771	7 1-2	132.83	35*	86.34	
	426	30	127.80	45*	70.29	
	36	10	3.60	37 1-2*	2.25	
	4	35	1.40	45*	.77	
Gold 10 oz.	2108	9	189.72	40*	113.84	
	74	35	25.90	45*	14.25	
	4546	8	363.68	37 1-2*	227.30	
						$789.80

Jan. 31st, 1899, Cont.

Gold 10 oz.	964	35	337.40	45*	185.57	
	1430					
Gold 12 oz.	182	11	177.32			
	926	10	92.60	40*	161.96	
	276	40	110.40			
	26	50	13.00	50*	61.70	
Gold 12 oz.	1295	13 1-2	174.83	45*	96.16	
	448	45	201.60	50*	100.80	
Emb. Gold,	160	18	28.80	50*	14.40	
	86	12 1-2	10.75	45*	5.91	
	38	55	20.90	50*	10.45	
						$636.95

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York Card & Paper Co.—Cont.

Feb. 10th.

White 9 oz.	1808	5	90.40	30*	63.28	
	124	18	22.32	45*	12.28	
	1040	5 1-2	57.20	30*	40.04	
	112	25	28.00	45*	15.40	
	1186	6	71.16	30*	49.81	
	194	28	54.32			
	8	22	1.76	45*	30.84	
	142	7	9.94	35*	5.46	
Glim. 10 oz.	100	8	8.00	37 1-2*	5.00	
	70	6 1-2	4.55	32 1-2*	3.07	
	26	25	6.50	45*	3.58	
	300	7 1-2	22.50	35*	14.63	
Gold 10 oz.	200	9	18.00	40*	10.80	
	150	8	12.00	37 1-2*	7.50	
	56	10	5.60	40*	3.36	
	36	8	2.88	37 1-2*	1.80	
	14	40	5.60	50*	2.80	
Gold 12 oz.	200	13 1-2	27.00			
	250	12 1-2	31.25	45*	32.04	
	120	45	54.00	50*	27.00	
						$329.39

THE LEWIS VOIGHT & SONS CO.

York Card & Paper Co.—Cont.

Feb. 20th.

Whites, 9 oz.	352	5	17.60			
	350	5 1-2	19.25	30*	25.80	
Golds 10. oz.	100					
Gold 12 oz.	616	10	71.60	40*	42.96	
	400	8	32.00	37 1-2*	20.00	
	166	40	66.40	50*	33.20	
	60	9	5.40	40*	3.24	
	24	13 1-2	3.24	45*	1.78	
	5	45	2.25	50*	1.13	
						$128.11

Feb. 22nd, 1899.

White,	338	5	16.90	30*	11.83	
	24	18	4.32	45*	2.38	
	150	5 1-2	8.25	30*	5.78	
Glimmer,	50	7 1-2	3.75	35*	2.44	
	30	6	1.80	30*	1.26	
	14	30	4.20	45*	2.31	
Gold,	162	12 1-2	20.25	45*	11.14	
	384	11	42.24	42 1-2*	24.29	
	272	9	24.48	40*	14.69	
	110	40	44.00			

York Card & Paper Co.—Cont.

	1000	16	160.00	50*	102.00	
	600	11	66.00	42 1-2*	37.95	
	240	50	120.00	50*	60.00	
						$276.07
			Feb. 28th.			
Whites 9 oz.	100	5 1-2	5.50	30*	3.85	
	10	18	1.80	45*	.99	
	70	7	4.90	35*	3.19	
	16	28	4.48	45*	2.47	
	1300	7 1-2	97.50	35*	63.38	
	770	6	46.20	30*	32.34	
	288	30	86.40	45*	47.52	
						$153.74
			March 4th.			
White 9 oz.	550	5	27.50	30*	19.25	
	36	18	6.48	45*	3.56	
	320	5 1-2	17.60	30*	12.32	
	66	25	16.50	45*	9.08	
Glim. 10 oz.	50	7 1-2	3.75	35*	2.44	
	30	6	1.80	30	1.26	
	26	30	7.80	45*	4.29	
	500	8	40.00	37 1-2*	25.00	
	300	6 1-2	19.50	32 1-2*	13.16	

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York Card & Paper Co.—Cont.

	120	30	36.00	45	19.80	
Gold,	300	10	30.00	40*	18.00	
	200	8	16.00	37 1-2*	10.00	
	84	40	33.60	50*	16.80	
	26	9	2.34			
	200	10	20.00	40*	13.40	
	120	8	9.60	37 1-2*	6.00	
	50	40	20.00	50*	10.00	
Gold 12 oz.	120	11	13.20	42 1-2*	7.59	
	500	18	90.00			
	110	50	55.00	50*	72.50	
	106	12 1-2	13.25	45*	7.29	
	150	11	16.50	42 1-2*	9.49	
	54	45	24.30	50*	12.15	
						$293.38

March 9th.

Whites 9 oz.	125	5 1-2	6.93	30*	4.85	
	18	25	4.50			
Gold 12 oz.	334	12 1-2	41.75	45*	25.44	
						$30.29

March 17th, 1899.

Golds 12 oz.	55	13 1-2	7.43	45*	4.09

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York Card & Paper Company—Cont.

	38	45	17.10			
	1000	16	160.00			
	250	50	125.00	50*	151.05	
	749	11	82.39	42 1-2*	47.38	
						$202.52
			March 17th (29th).			
Whites oz.	100	5 1-2	5.50	30*	3.85	
						$3.85
			April 4th (14th).			
	630	5	31.50	30*	22.05	
	12	22	2.64	45*	1.46	
	100	6	6.00	30*	4.20	
	144	18	25.92	45*	14.26	
	1060	5 1-2	58.30	30*	40.81	
Glim.	400	7 1-2	30.00	35*	19.50	
Glim.	860					
Gold 10 oz.	300	10	116.00	40*	69.60	
	222	35	77.70	45*	42.74	
	12	40	4.80	50*	2.40	
	30	8	2.40	37 1-2*	1.50	
	12	35	4.20	45*	2.31	
	30	8	2.40	37 1-2*	1.50	

York Card & Paper Company—Cont.

	6	35	2.10	45*	1.16	
	30	8	2.40	37 1-2*	1.50	
	90	9	8.10	40*	4.86	
	6	40	2.40			
	6	50	3.00	50*	2.70	
	100	8	8.00	37 1-2*	5.00	
	150	12 1-2	18.75	45*	1032	
Gold 12 oz.	100	13 1-2	13.50	45*	7.43	
	150	16	24.00	50*	12.00	
	160	12 1-2	20.00	45*	11.00	
	55	45	24.75			
	250	15	37.50			
	1500	16	240.00	50*	151.13	
	900	11	99.00	42 1-2*	56.93	
	360	50	180.00	50*	90.00	
						$576.36
			April 5th.			
Gold 10 oz.	300	10	30.00	40*	18.00	
	180	8	14.40	37 1-2*	9.00	
	80	40	32.00	50*	16.00	
						$43.00
			April 10th.			
Whites,	8	5 1-2	.44	30*	.31	
						$.31

THIS PAGE BOUND VERT

York Card & Paper Company—Cont.

April 21st.

White,	1650	5	82.50	30*	57.75	
	60	15	9.00	40*	5.40	
	12	18	2.16	45*	1.19	
Glimmer,	400	7 1-2	30.00	35*	19.50	
	350	6	21.00	30*	14.70	
	80	30	24.00			
Gold,	44	12 1-2	5.50	45*	16.23	
	150	18	27.00	50*	13.50	
						$128.27

April 26th, 1899.

Whites, 9 oz.	600	5	30.00			
	1400	5 1-2	77.00	30*	74.90	
	150	25	37.50	45*	20.63	
	500	6	30.00	30*	21.00	
Gold 12 oz.	150	12 1-2	18.75	45*	10.32	
						$126.85

April 29th.

Gold 10 oz.	824					
Glimmer,	100	10	92.40	40*	55.44	
	122	40	48.80	50*	24.40	

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THE LEWIS VOIGHT & SONS CO.

York Card & Paper Company—Cont.

	250	8	20.00	37 1-2*	12.50	
12 oz. Gold,	40	12 1-2	5.00	45*	2.75	$95.09
			May 6th.			
Gold 10 oz.	126	8	10.08	37 1-2*	6.30	
	46	40	18.40	50*	9.20	$15.50
			May 12th.			
Whites 9 oz.	100	7	7.00	35*	4.55	
	6	18	1.08	45*	.60	$5.15
			May 16th.			
Wht. Bor. 10 oz.	20	28	5.60	45*	3.08	$3.08
			June 9th.			
Wht. Bor. 10 oz.	26	15	3.90	40*	2.34	
	32	18	5.76	45*	3.17	
Glim. 10 oz.	116	7 1-2	8.70	35*	5.66	
	160	6	9.60	30*	6.72	
	22	25	5.50			

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York Card & Paper Co.—Cont.

	12	35	4.20	45*	5.34	
Flat 12 oz.	80	10	8.00	37 1-2*	5.00	
	60	35	21.00	45*	11.55	
Golds 10 oz.	110	9	9.90	40*	5.94	
	40	40	16.00	50*	8.00	
	200	10	20.00	40*	12.00	
	134	13 1-2	18.09	45*	9.95	
	300	11	33.00	42 1-2*	18.98	
	90	12 1-2	11.25	45*	6.19	
	186	18	33.48	50*	16.74	
						$117.58
	Total,					$16,815.77

York Wall Paper Company.

Grade.	No. of Rolls.	Price.	Amount.	Disct.	Net Amt.
			Oct. 1st, 1898. 9/28/98.		
Blank,	45000	5	2250.00	30	1575.00

THE LEWIS VOIGHT & SONS CO.

York Wall Paper Company—Cont.

	4200	15	630.00	40	378.00	
						$1953.00
			Oct. 1st, 9/28/98.			
Emb.	10486	11	1153.46	42 1-2	663.24	
	1365	30	409.50	45	225.23	
	5023	7	351.61	35	228.55	
Blank,	1200	6 1-2	78.00	32 1-2	52.65	
	150	22	33.00	45	18.15	
	1800	5 1-2	99.00	30	69.30	
	150	15	22.50	40	13.50	
	2400	5 1-2	132.00	30	92.40	
	150	18	27.00	45	14.85	
	2500	5 1-2	137.50	30	96.25	
	200	18	36.00	45	19.80	
	800	5 1-2	44.00	30	30.80	
	8000	4 1-2	360.00	27 1-2	261.00	
	1000	15	150.00	40	90.00	
	4000	4 1-2	180.00	27 1-2	130.50	
						$2006.22
			Oct. 1st, 9/29/98.			
Blank,	45000	4 1-2	2025.00	27 1-2	1468.13	
	3600	15	540.00	40	324.00	
						$1792.13

THIS PAGE BOUND VERT

York Wall Paper Company—Cont.

Oct. 1st, 9/30/98.

Emb.	10862	11	1194.82	42 1-2	687.02	
	1270	30	381.00	45	209.55	
Gilt,	4996	7	349.72	35	227.32	
Blank,	20000	5	1000.00	30	700.00	
	2800	15	420.00	40	252.00	
	10000	5	500.00	30	350.00	
						$2425.89

Oct. 5th.

Blank,	30020	5	1501.00	30	1050.70	
	4208	15	631.20	40	378.72	
	15004	5	750.20	30	525.14	
						$1954.56

Oct. 20th.

Wht. Blk.	2200	5 1-2	121.00	30*	84.70
	270	18	48.60	45*	26.73
	3200	5 1-2	176.00	30*	123.20
	270	15	40.50	40*	24.30
	2800	5 1-2	154.00	30*	107.80
	400	25	100.00	45*	55.00
	800	5 1-2	44.00	30*	30.80

York Wall Paper Company—Cont.

	2200	6 1-2	143.00	32 1-2*	96.53	
	550	28	154.00	45*	84.70	
	1200	5 1-2	63.00	30*	46.20	
	2800	6 1-2	182.00	32 1-2*	122.85	
	350	22	77.00	45*	42.35	
	3057	5 1-2	168.14	30*	117.70	
	400	20	80.00	45*	44.00	
	2800	5 1-2	154.00	30*	107.80	
	500	25	125.00	45*	68.75	
	2200	5 1-2	121.00	30*	84.70	
	150	18	27.00	45*	14.85	
	600	5 1-2	33.00	30*	23.10	
						$1306.06

Nov. 12th, 1898.

Blk.	3000	5	150.00	30*	105.00	
	8500	5 1-2	467.50	30*	327.25	
Gilt,	164	7	11.48	35*	7.46	
	26	9	2.34	40*	1.40	
	50	11	5.50	42 1-2*	3.16	
Col. Bdr.	250	15	37.50	40*	22.50	
	150	18	27.00	45*	14.85	
	1150	25	287.50	45*	158.12	
Col. Bdr.	12	25	3.00	45*	1.65	

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York Wall Paper Company—Cont.

	12	40	4.80	50*	2.40	
						$643.79
			Nov. 21st.			
Gilt,	100	7	7.00	35*	4.55	
Gilt Bord.	44	25	11.00	45*	6.05	
						$10.60
			Nov. 29th.			
Blk.	23186	5	1159.30	30*	811.51	
	7282	5 1-2	400.51	30*	280.36	
	5900	6 1-2	383.50	32 1-2*	258.87	
Col. Bdr.	2156	15	323.40	40*	194.04	
	414	18	74.52	45*	40.99	
	552	22	121.44			
	390	28	109.20	45*	126.86	
						$1712.63
			Dec. 12th.			
Blank,	5386	5 1-2	296.23	30*	207.37	
	2250	6 1-2	146.25	32 1-2*	98.73	
	1686	7	118.02	35*	76.72	
Gilt,	654	9	58.86	40*	35.32	
	2976	11	327.36	40*	196.42	

York Wall Paper Company—Cont.

Col. Bdr.	1050	20	210.00	45*		
	968	25	242.00	45*		
	534	28	149.52	45*	330.84	
	690	40	276.00	50*	138.00	
						$1083.40
			Dec. 21st, 1898.			
Blk.	15000	5	750.00	30*	525.00	
	18658	5 1-2	1026.19	30*	718.34	
Gilt,	500	7	35.00	35*	22.75	
	200	9	18.00			
	300	11	33.00			
Col. Bdr.	1942	15	291.30	40*	205.38	
	138	18	24.84			
	150	20	30.00	45*	30.17	
Col. Bdr.	1400	25	350.00			
Gilt Bdr.	36	25	9.00	45*	197.45	
	80	40	32.00	50*	16.00	
						$1715.09
			Dec. 31st.			
Blank,	2300	4 1-2	103.50	25*	77.63	
	45000	5	2250.00			
	630	5 1-2	34.65	30*	1599.26	

York Wall Paper Company—Cont.

Gilt,	76	9	6.84	40*	4.11	
Blk.	300	6 1-2	19.50	32 1-2*	13.17	
Col. Bdr.	4332	15	649.80	40*	389.88	
	24	18	4.32			
	50	22	11.00			
Gt. Bdr.	12	35	4.20	45*	10.74	
						$2094.79
			Jan. 24th, 1899.			
Blank,	1500	4 1-2	67.50	27 1-2*	48.94	
	4050	5 1-2	222.75	30*	155.93	
Gilt,	180	7	12.60	35*	8.19	
Col. Bdr.	120	15	18.00	40*	10.80	
	36	18	6.48			
	524					
Gilt Bord.	12	25	134.00	45*	77.27	
						$301.13
			Jan. 29th (20th).			
Blank,	4500	4 1-2	202.50	27 1-2*	146.82	
	1350	5	67.50			
	15550	5 1-2	855.25	30*	645.93	
	5100	6 1-2	331.50	32 1-2*	223.77	
Gilt,	634	7	44.38	35*	28.85	
Col. Bdr.	732	15	109.80	40*	65.88	

York Wall Paper Company—Cont.

	894	18	160.92			
	492	22	108.24			
	724	28	202.72			
Gilt Bdr.	6	25	1.50	45*	260.36	
						$1371.61
			Jan. 31st.			
Blank,	1650	5 1-2	97.75	30*	63.53	
Col. Bordr.	32	25	8.00	45*	4.40	
	146	9	13.14	40*	7.89	
Gilt Bdr.	70	40	28.00	50*	14.00	
						$89.82
			Feb. 22nd, 1899.			
Blk.	3784	4 1-2	170.28	27 1-2*	123.46	
	6526	5 1-2	358.93	30*	251.26	
	400	4 1-2	18.00	27 1-2*	13.05	
	1500	6 1-2	97.50	32 1-2*	65.82	
Gilt,	368	11	40.48	42 1-2*	23.28	
C. Bdr.	466	15	69.90	40*	41.94	
Col. Bdr.	94	18	16.92			
	136	22	29.92			
	174	25	43.50			
	204	28	57.12			

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York Wall Paper Company—Cont.

Gilt Bdr.	6	25	1.50	45*	81.93	
	78	40	31.20	50*	15.60	
Emb. Bdr.	356	30	106.80	45*	58.74	
						$675.08
			Feb. 24th.			
Blank,	270	5 1-2	14.85	30*	10.40	
	500	6 1-2	32.50	32 1-2*	21.94	
Col. Bdr.	82	22	18.04	45*	9.93	
						$42.27
			March 9th.			
Blank,	1800	4 1-2	81.00	27 1-2*	58.73	
	2850	5 1-2	156.75	30*	109.73	
	1200	6 1-2	78.00	32 1-2*	52.65	
Col. Bdr.	154	15	23.10	40*	13.86	
	50	18	9.00			
	14	25	3.50	45*	6.88	
						$241.85
			March 21st.			
Blank,	1600	4 1-2	72.00	27 1-2*	52.20	
Col. Bord.	120	15	18.00	40*	10.80	
						$63.00
			March 21st.			
Blank,	350	5 1-2	19.25	30*	13.48	

York Wall Paper Company—Cont.

	300	6 1-2	19.50	32 1-2*	13.16	
Col. Bord.	86	28	23.52	45*	12.94	
						$39.58
			April 17th.			
Blank,	450	5 1-2	24.75	30*	17.33	
Col. Bord.	58	15	8.70	40*	5.22	
	36	28	10.08	45*	5.55	
						$28.10
			May 16th.			
Blank,	49720	5	2486.00			
	694	5 1-2	38.17	30*	1766.92	
	400	6 1-2	26.00	32 1-2*	17.55	
Gilt,	518	8	41.44	37 1-2*	25.90	
	1032	9	92.88			
Col. Bord.	1837	15	275.55	40*	221.06	
	46	18	8.28			
	74	22	16.28			
Gilt,	254	35	88.90			
Col. Bord.	158	25	39.50	45*	84.13	
						$2115.56
	Total,					$23,666.16

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352 And afterwards, to-wit: on the 12th day of February A. D. 1901 an Entry was made upon the Journal of said Court clothed in the words and figures following, to-wit:

Entry Journal 6, Page 159.

Leave is given the defendant to file an answer herein.

And afterwards, to-wit: on the 12th day of February A. D. 1901 an answer was filed in the clerk's Office of said Court clothed in the words and figures following, to-wit:

Answer.

THE CONTINENTAL WALL PAPER CO., Plaintiff,
vs.
THE LEWIS VOIGHT & SONS CO., Defendant.

Answer.

The defendant for answer to the petition and amendment to the petition heretofore filed herein, says:

First defense. It admits that the Lewis Voight & Sons Company is a corporation created, organized and existing under the Laws of the State of Ohio and a citizen and resident of said State and that the plaintiff purported to be at the times set forth in said petition and amendment to the petition a corporation created, organized and existing under the Laws of the State of New York and a citizen and resident of said State.

The defendant further admits that merchandise of the character, to-wit: wall paper, and in the quantities, to-wit: the number of rolls described in the exhibits attached to the petition and amendment to the petition, was supplied to the defendant between July 1898 and July 1st, 1899, by the factories owned and operated by the individuals, firms and corporations shown on the face of said exhibits; but, the defendant denies each and every other allegation in said petition and amendment to the petition contained.

Second defense. The defendant for a second defense further says: That it has been for ten years last past and was at the times stated in said petition and amendment to the petition and hereinafter stated and is now, engaged in the business of buying, selling and dealing generally throughout the
353 State of Ohio, and other States and Territories of the United States, in wall paper of all kinds, with its principal office and place of business in Cincinnati, Ohio.

That the said wall paper is an article and commodity of general necessity and use among the people of the United States and of foreign countries and as such was, and is, used and sold everywhere for the preservation, protection and decoration of building and dwelling house.

That the business of the defendant has been during its existence quite extensive and one of the largest of its kind in the United States and has consisted of what is generally called that of a "jobber" or "wholesaler"; that is to say, the defendant at the beginning of each season which commences in September and closes the first of July following according to the custom of the trade, has bought from the various individuals, firms and corporations engaged in the various States of the United States, hereinafter set forth, in the manufacture of wall paper, said merchandise to be manufactured for it from samples submitted at the beginning of said season, in wholesale lots and to be shipped to Cincinnati, Ohio, and there has resold the same *firm* from time to time to retail dealers throughout the State of Ohio and other States and Territories of the United States.

That prior to the year 1892 there were in the United States about thirty-five factories, situated in the States of Massachusetts, New York, New Jersey, Pennsylvania, Delaware, Maryland and Ohio, owned and operated respectively by the various individuals, firms and corporations engaged in the business of manufacturing wall paper and selling said merchandise to jobbers and dealers, such as the defendant and others throughout the several States and Territories of the United States and foreign countries, in free and unrestricted competition, the one with the other, and in the usual manner of conducting business.

That on or about the said last mentioned date the following of said persons, firms and corporations, hereinafter called "Original Owners Class A," to-wit:

Beck & Co., of New York, N. Y.; M. H. Birge & Sons of Buffalo, N. Y.; Carey Bros., Philadelphia, Pa.; Cresswell & Washburn, Philadelphia, Pa.; Henry Geldhill & Co., New York, N. Y.; The Robert Graves Co., Brooklyn, N. Y.; R. S. Hobbs & Co., of New York N. Y.; Howell & Bros. Lmt., Philadelphia, Pa.; F. E. James Co., of New York, N. Y.; Janeway & Carpenter of New Brunswick, N. J.; Janeway & Co., of New Brunswick, N. J.; Keystone Wall Paper Co., of Philadelphia, Pa.; William H. Mairs & Co., of Brooklyn,
N. Y.; Nevius & Havlin of New York, N. Y.; W. M. Peak
354 of Brooklyn, N. Y.; Thomas Strahan & Co. of Chelsea, Mass., and Warren Fuller & Co. of New York, N. Y., were so engaged in the manufacture and sale of wall paper as aforesaid; were the largest and most important manufacturers in the United States; controlled about eighty-five per cent. of the business thereof; and entered into a combination or trust agreement, whereby it was agreed by and between them that, a new corporation to transact all the business of all said "Original Owners Class A" should be organized under the Laws of the State of New York, to be called "The National Wall Paper Co." and that each and all of said "Original Owners Class A" should transfer to the said "The National Wall Paper Co." each and all of their plants, business, good will and other assets of every kind and should be paid therefor mainly in shares of the capital stock of the said "The National Wall Paper Co." which capital stock it was agreed should aggregate and amount to $30,000,000.00 of Common Stock and $8,000,000. so called Debenture

Stock and said "Original Owners Class A" to be the main subscribers in agreed proportions as individuals, partners or stockholders of the old corporations, to the capital stock of the said "The National Wall Paper Company."

That on or about the 2nd of June, 1892, said agreement was carried out; said "The National Wall Paper Co." organized under the Laws of the State of New York; said transfers made as agreed upon.

That said combination or trust agreement was so made and carried out as aforesaid and said "The National Wall Paper Co." organized as aforesaid:

a. To restrain the trade and commerce in wall paper among the several States and Territories and with foreign Nations.

b. To monopolize and attempt to monopolize the trade and commerce in wall paper among the several States and Territories and with foreign Nations.

c. To increase, regulate dictate and fix the price of wall paper without reference to its reasonable or market value;

d. To fix and limit the amount and quantity of wall paper to be sold in the United States and the several States and Territories thereof.

e. To prevent competition in the sale of wall paper in the several States and Territories and in foreign countries;

f. To establish and settle the price of wall paper between said original owners and said "The National Wall Paper Co." so as to preclude a free and unrestrained competition among them in the sale of wall paper;

355 *g.* To combine and unite all the interest which all said original owners had or had had in connection with the manufacture and sale of wall paper in such manner as to affect the price thereof and unreasonably enchance the same;

h. To bring into said combination all the other manufacturers of wall paper within the United States;

That in pursuance of said agreement and combination and for the foregoing purposes and each thereof, the said "The National Wall Paper Co." did, after its organization and up to the year 1898, attempt to carry out the purposes aforesaid with greater or less success but by reason of not owning or controlling all the manufacturers of wall paper within the United States failed to fully accomplish all of the said purpose and at the time last mentioned controlled about fifty-five per cent. of the business in wall paper in the United States.

That at said time the remaining forty-five per cent. of said business was being carried on and conducted substantially by the following persons, firms and corporations hereinafter called "Original Owners Class B" who to protect themselves against said "The National Wall Paper Co." had organized an association or club known as "The Wall Paper Manufacturers Club," to-wit:

Wm. Bailey & Sons, Cleveland, Ohio; Benton, Heath & Co., Hoboken, N. J., Columbia Wall Paper Co., of Philadelphia, Pa.; Connowingo Wall Paper Co., Baltimore, Md.; Corey Heller & Co., of Newark, N. J.; William Campbell & Co., of New York, N. Y.;

Gossler & Wilt Wall Paper Co., Philadelphia, Pa.; George Halbert, Brooklyn, N. Y. Hoefer, Meinken & Baeck Co. of Nepera Park, N. Y.; Johnstown Wall Paper Co. of Johnstown, Pa.; Middletown Paper Co. of Boston, Mass.; Philadelphia Wall Paper Mills of Philadelphia, Pa.; Standard Wall Paper Co. of Sandy Hill, N. Y. Tarrytown Wall Paper Co. of Tarrytown, N. Y.; Thomas & Davis Co. of Newark Del.; Williamson Wall Paper Co. of Long Island City, N. Y.; York Card & Paper Co. of York, Pa.; and York Wall Paper Co. of York, Pa.

That said "Original Owners Class B" were at said times so engaged in the manufacture and sale of wall paper as aforesaid throughout all the United States and Territories and foreign countries and together with the said "The National Wall Paper Company" controlled and conducted the entire business of the manufacture and sale of wall paper in the United States, to-wit, ninety-eight per cent.

That on or about the — day of —— 1898, the said "The National Wall Paper Co." including the "Original Owners Class A" and said "Original Owners Class B" entered into a combination or
356 trust agreement whereby it was agreed among, by and between them that a new corporation to transact all the business of said "The National Wall Paper Co." including the "Original Owners Class A" and all said "Original Owners Class B" should be organized under the Laws of the State of New York to be called "The Continental Wall Paper Company," the plaintiff herein, with a capital stock of $200,000, divided into 16,000 shares of a par value of $12.50 each, of which "The National Wall Paper Co." should take 55 per cent. or 8,800 shares of a par value of $12.50 per share or $110,000 and pay for the same in cash and the other "Original Owners Class B," should take the remaining 45 per cent. or 7,200 -hares of a par value of $12.50 per share or $90,000 to be divided among them respectively and paid for respectively in cash in proportion to the number of rolls of paper manufactured by each of them the preceding year being the supposed relative value of the business carried on by each of them respectively in comparision with the others.

That "The National Wall Paper Co." as such stockholder should select three directors of said "The Continental Wall Paper Co." and the "Original Owners Class B" should select three other directors of said company, which six directors should select a seventh who was to decide all disputed matters;

That said "The National Wall Paper Co." and each of said "Original Owners Class B" calling itself, himself or themselves respectively the "Vendor" should sign a contract or agreement with "The Continental Wall Paper Co." calling itself the "Company," a copy of which said contract or agreement is attached herewith and made a part hereof and marked "Exhibit 1," (with the exception of necessary signatures, seals, number of shares allotted; sum to be paid therefor and the name of the so called "Vendor").

That it was further agreed that the said "The Continental Wall Paper Co." should in some form so as to disguise the real nature of

the transaction, exact and force from all buyers of wall paper known and spoken of in the agreement as "Jobbers," an agreement in writing to buy goods only from the "Company" or from manufacturers who were stockholders in the "Company" and at prices as fixed in Schedule B attached to said agreement, and likewise, an agreement not to sell to dealers other than "Jobbers" goods at lower prices or upon better or more favorable terms than those shown in Schedule C attached to said agreement, under the penalty that, if said "Jobbers" refused to sign such an agreement no wall paper would
357 be sold to such "Jobber" by said plaintiff or any of said "Original Owners Class A" and "Original Owners Class B" at less than list prices and that the said so-called "Vendor" should in some form so as to disguise the real nature of the transaction, should exact and force from all buyers spoken of in said agreement as "Road Buyers" who were quantity buyers, an agreement in writing with such "Vendor" not to resell such goods on terms better or more favorable than those specified in Schedule C attached to said agreement, under the penalty that, if said Road Dealer refused to sign such agreement no wall paper would be sold to him by any of said so-called "Vendors" at less than list prices;

That it was further agreed that the profits which would be accumulated by "The Continental Wall Paper Co." should be divided every month to its stockholders in proportion to the amount of stock held as aforesaid;

That on or about the — day of July, 1898, said agreement was carried out; said "The Continental Wall Paper Co." organized under the laws of the State of New York as a corporation; said contracts signed by said "The National Wall Paper Co." and said "Original Owners Class B" as so-called "Vendors" respectively and said plaintiff as so-called "Company;" said $200,000 of stock subscribed and paid for in the proportion aforesaid; said stock endorsed and delivered to said "The Continental Wall Paper Co.;" said directors selected as agreed; rules and regulations adopted by said directors, dictating the manner of conducting the business of all said so-called "Vendors;" hours said factories owned by them were to be operated; patterns of wall paper to be manufactured by them; the times when samples of the goods to be manufactured for the ensuing season were to be submitted to a pricing committee appointed by said directors, to enable it to classify and fix the list prices theron as fixed in said contracts; list prices; discounts, terms of sale, equalization of freight rates and other details fixed and determined; all dealers in wall paper in the United States arbitrarily divided in accordance with said agreement into "Jobbers" and "Road Buyers" and said "Jobbers" divided into three classes, to-wit:

Purchasers of $100,000, per year, First Class;

Purchasers of $50,000, per year Second Class;

Purchasers of $25,000, per year, Third Class; and "Road Buyers" into:

Road Buyers proper and Quantity Buyers.

358 The different dealers in the United States classified under said heads according to the number of rolls of paper pur-

chased by them respectively the preceding year as shown by the books of said "Original Owners Class A" and said "Original Owners Class B" respectively; printed forms of agreements, which every purchaser of paper who had been or was a "Jobber" or "Quantity Buyer" from any of said manufacturers should be compelled to sign, according to the class to which said purchaser respectively might belong, were determined upon and prepared in accordance with said agreement between said so-called "Vendors" and the plaintiff;

That said form of agreement as to "Jobbers" of the First Class, to which defendant was assigned, was in pursuance of said agreement in the words and figures following, to-wit: (with the exception of signatures and blanks to be filled).

"An agreement made this — day of —— in the year one thousand eight hundred and ninety-eight between the Continental Wall Paper Company, a corporation organized under the laws of the State of New York (hereinafter called the Company,) party of the first part and (hereinafter called the Jobber) party of the second part.

In consideration of the sum of one dollar, paid by the Jobber unto the Company for the granting of this agreement the receipt whereof is hereby acknowledged, and other valuable considerations;

It is agreed, between the parties hereto as follows:

First. That the Company will sell, subject to such credit limitation as it may impose, and the Jobber will purchase the entire requirements of the Jobber in his business of selling wall paper for the business year ending July 1st, 1899, to the amount of a gross value, without discounts of the jobber reserving to himself the right to purchase such merchandise as he may need in excess of — from others.

The Company is to deliver the goods without additional charge f. o. b. at New York or Philadelphia, or to equalize freights from the places at which it makes deliveries to either of said cities.

Second. The jobber shall be allowed discounts at the rates shown in the accompanying schedule marked "A" which is hereby embodied in this agreement as a part thereof.

The terms of payment to be as follows; Four months from
359 date of invoice, with discount at the rate of one per cent. per month for anticipated payment; provided settlement be made within 30 days from date of shipment either by cash or note. Invoices for all goods shipped between October 15th, and March 1st, to take the latter date.

Third. Attached hereto marked "B" is a schedule of the road prices at which the Company sells its goods for the term embraced in this contract to dealers other than Jobbers and also a statement of discounts allowed to such customers other than jobbers for quantity purchases, together with the terms of credit, and freight allowance to which such customers are entitled.

It is an essential condition of this agreement that the Jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the Company hereunder at lower prices or upon

better or more favorable terms than those shown in schedule "B," the intent hereof being to assure the Company against the use by the Jobber of this agreement to undersell the Company.

The prompt performance by the Jobber of the provisions of this agreement as to payment and otherwise is a condition precedent to exacting the continuous performance of said agreement by the Company.

In witness whereof, the Company has caused this instrument to be executed, and the Jobber has hereunto set his hand the day and year first above written."

Schedule A therein referred to was schedule B, between the so-called "Vendors" and plaintiff as attached hereto so far as the same referred to what are therein designated "1st Job" being jobbers of said First Class.

Schedule B therein referred to was schedule C of the agreement between the so-called "Vendors" and plaintiff above referred to; and the amount of gross value agreed to be sold and purchased and left blank was intended to be filled out before execution with approximately double the amount bought and purchased by said dealer or so-called "First Class Jobber" from all the said so-called "Vendors" during the preceding year and was much more in amount than by any possibility could or would be purchased by such dealer.

That said forms of agreement as to Second and Third Class Jobbers were similar in form and purpose with the necessary variations in the schedule attached thereto as schedules A and B.

That said form of agreement as to "Road Buyers" in quantities was in pursuance of said agreement between said so-called
360 "Vendors" and said plaintiff in the words and figures following, to-wit: (with the exceptions of signatures and blanks to be filled.)

—— ——.

—— ——
—— ——

"In consideration of your having sold us wall paper, etc., at list prices and at quantity discounts as per following schedule,

Up to 5½c. inclusive, 600 rolls, 5 per cent.; 1200 rolls, 10 per cent.

6c. to 9c. inclusive, 300 rolls, 7½ per cent.; 600 rolls, 12½ per cent.

10c. to 15c. inclusive, 200 rolls, 10 per cent.; 400 rolls, 15 per cent.

16c. and up 100 rolls, 10 per cent.; 200 rolls, 15 per cent.

Discounts on Borders and Ceiling Papers follows the discounts on the Hangings they match.

Plain Ingrains, Varnish Tiles, 200 rolls or more, 10 per cent.

Ingrain Borders, 26 rolls of a kind, 10 per cent.

Ingrain Borders, 50 rolls or over 15 per cent.

We hereby agree not to resell any of such goods to others on terms better or more favorable than those specified in the above schedule nor lower than said list prics, and our faithful performance of this agreement is a condition precedent to the filling of our order.

The intent hereof is to protect you fully against being undersold by us among customers to whom you do not allow quantity discounts."

—— ——.

That as to all other dealers and purchasers of wall paper in the United States so-called list prices referred to in the agreement between the so-called "Vendors" and plaintiff were exacted by said so-called "Vendors," "Jobbers" and "Quantity Buyers."

That the object and purpose of said agreements and each of them and their effect were to form a gigantic trust and monopoly of the business of manufacturing, buying and selling wall paper in the United States as carried on and conducted in and between the several States and Territories thereof and with foreign Nations and to dictate the conduct and management of said business in the manner above indicated.

361 That said combination or trust agreement was made and carried out as aforesaid and said "The Continental Wall Paper Co." organized as aforesaid for each and all of the following purposes, to-wit:

a. To restrain the trade and commerce in wall paper among the several States and Territories and with foreign Nations;

b. To monopolize and attempt to monopolize the trade and commerce in wall paper among the several States and Territories and with foreign Nations;

c. To increase, regulate, dic-ate and fix the price of wall paper for all dealers and purchasers in the United States without reference to its reasonable and market value;

d. To fix and limit the amount and quantity of wall paper to be sold in the United States and through and between the several States and Territories and foreign Nations;

e. To prevent competition in the sale of wall paper between and through the several States and Territories and in foreign countries;

f. To establish and settle the price of wall paper between the said original owners, said "The National Wall Paper Co." and said "The Continental Wall Paper Co." so as to preclude a free and unrestrained competition among them in the sale of wall paper and of purchasers from them in the several States and Territories of the United States and in foreign Nations;

g. To combine and unite all the interest which all the said original owners had or had had in connection with the manufacturer and the sale of wall paper as aforesaid and all purchasers from them in such manner as to affect the price thereof and unreasonably enchance the same.

h. To bring into said combination all the manufacturers of and dealers in wall paper within the United States and in the several States and Territories thereof.

That said agreements between said so-called "Vendors" and "Company" were drawn for the purposes and with the intent of disguising the real nature of the transaction and the real purpose above set forth.

That while professing to be a contract for purchase and sale they were of the character above set forth and for the purpose above set forth.

That while reciting the Company was desirous of acting as the Selling Agent of the "Vendor" in handling the entire product of the "Vendor" said agreements provided for the sale by the
362 "Vendor" to the "Company" of the entire product of wall paper that might be manufactured by the "Vendor."

That while reciting that the "Vendor" was desirous of acquiring shares of stock of said Company at par, said agreements provided; that said stock when paid for should be immediately deposited with said Company for the purpose in reality of enforcing the observance of said illegal agreements by said "Vendors" and determining the division and pooling of the business as between them.

That while professing to conform to the Laws of the various States in which the "Vendors" were located by limiting the operation of the factories to ten hours per day, said agreement intended in fact to conform to the Laws of none of the States but to limit the production and prevent the enlargement of the manufacturing facilities of any of the so-called "Vendors" and that said agreements were subject to the entire capital stock being subscribed for and its continuance to the unanimous consent of all of the parties thereto.

That in pursuance of said agreement and combination and for the foregoing purposes and each thereof, the said "The Continental Wall Paper Co." the plaintiff, did after its organization and during *the* 1898-99 attempt to and did carry out the purpose aforesaid and transacted the business and manufacture and sale of wall paper in the manner aforesaid which had theretofore been transacted by all said original owners, being substantially the entire business of the kind aforesaid, in the United States.

That in carrying on said business it forced the defendant and every other dealer in the United States, from September or October 1898, who desired to procure wall paper at other than list prices as arbitrarily fixed by it, to sign a contract in the form above set forth at the prices which were unreasonable, excessive and unjust, or else refused to allow said defendant and every other dealer to purchase any paper either from itself or any of the so-called "Vendors" or to allow said so-called "Vendors" to sell paper to the said defendant; in other words, for all practical purposes to purchase any wall paper in the United States or to carry on any business in the United States.

That said defendant signed said contract subject to certain conditions as to its going into effect and the alleged sales and deliveries of goods, wares and merchandise and each thereof set forth in said Exhibits attached to the petition and amendment to the petition were made after July 20th, 1898, prior to July 1st, 1898, and were
363 made from the factories therein designated by said so-called "Vendors" in the course of the transaction of the business aforesaid under said agreement and the prices charged in said Exhibits attached to said petition and amendment to the petition are the prices fixed and determined in pursuance of and by the combina-

to the customers and to the Company immediately upon the shipment and delivery of such goods, said invoices specifying quantities and road prices.

Third. There shall be furnished by the Vendor to the Company on the 7th, 14th, 21st, and last days of each months (except when those days fall on Sundays, and then on the next preceding day) a just true statement of all shipments and deliveries of merchandise included in this contract which the Vendor may make for the account of the Company, which statement shall contain the names of the purchasers, the character of the goods sold and the prices at which they are sold, to the end that the Company may make the proper charges, and in order to entitle the Vendor to be credited with the agreed cost price for such goods.

Each of such statements of shipment shall be accompanied by an affidavit of one of the officers of the Vendor and one of its bookkeepers, and of one of its shipping clerks to the effect that the information therein contained is true.

Fourth. The Vendor will, at the option of the Company sell for the latter such of the goods manufactured by the Vendor as
366 are to be disposed of to purchasers not classified as jobbers, which sales shall be made at the cost and expense of the Vendor, said Vendor hereby guaranteeing all credits connected with such sales. The prices at which and the terms upon which, such goods are to be sold and are designated in this agreement as the "road-prices," and are contained in a schedule hereto annexed marked "C," which is hereby made a part of this agreement.

On the 7th, 14th, 21st and last days of each month (except when those days fall on Sundays, and then on the next succeeding days) the Vendor will furnish to the Company a statement showing all the shipments made on account of such sales, which statement shall contain the names of the purchasers, the character of the goods and the prices at which they were sold, and such sales shall be credited to the Vendor by the Company at the prices fixed in schedule "A," and shall be charged against said Vendor at the prices at which they were sold, which shall in no event be less than those designated in schedule "C."

The Vendor is to receive for its services and expenses connected with such sales and allowances discounts equal to those who are designated in a classification made by the parties hereto as "second class jobbers," less the discounts made on sales to purchasers designated in the accompanying schedules as "quantity purchasers" on which the Vendor has allowed the quantity discount, except that where special and exclusive goods are sold there shall be an allowance of 30 per cent. discount to the Vendor.

The prices of goods as fixed by schedule "A" and "C" may be altered from time to time, but the discounts allowed to jobbers shall not be altered at any time during the term of this agreement.

Fifth. The Vendor will make collections of all accounts for goods sold by it for the accounts of the Company under the provisions of the agreement, except for sales to jobbers (which accounts the Company is to collect,) and will, on the 10th, day of each and every

month during the term of this agreement, account to the Company. Such accounts shall be accompanied by a payment by the Vendor to the Company of the difference between the prices at which the goods are agreed to be sold to the Company as embodied in schedule "A," and the prices at which the Vendor has agreed to dispose of said goods as contained in schedule "C."

The purchases made by the Company from the Vendor hereunder shall be upon the same credit and terms as those accorded to
367 other dealers, but the Company shall have the right to anticipate the due date of all such purchases, and will pay, on the 10th day of each month, to the Vendor a sum on account of all shipments of the preceding month equal to not less than 30 per cent. of the road prices of goods shipped to jobbers by the Company.

Sixth. The Vendor hereby grants unto the Company the right, and it shall be the duty of the latter, through its officers selected for that purpose, to audit the books of account of the Vendor at such times and in such manner as the Company may, from time to time, deem necessary or proper. This provision is of the essence of the agreement, and a failure on the part of the Vendor to faithfully perform the same shall operate as a breach of the contract entitling the Company to abrogate the agreement and to such damages as it may be able to establish in addition to the absolute transfer and surrender to it of the stock to be pledged as hereinafter provided.

Seventh. There shall be a committee selected from the Company to be known as an Auditing Committee, which shall be made up from among the directors. Said committee shall have power to establish such a system of bookkeepers as in its judgment may be advisable.

In order to conform as nearly as may be to the laws of the various States in which the factories of the Vendor are located, it is understood that the Vendor shall not be at liberty to require from the Company the acceptance of the product of more than ten hours per day of any one of said factories.

The product intended to be sold to the Company hereunder and which the latter undertakes to acquire, does not contemplate the enlargement of the manufacturing facilities of the Vendor, but nothing herein contained shall be construed as affecting the right of the Vendor to substitute new machinery of the same capacity for any now in use which may become useless through wear or through destruction by fire or other casualty.

The power to designate the parties who are to be classed as jobbers and the discounts to which they are entitled is expressly reserved by the Company, and such designation is to be made through its Board of Directors, but the Vendor shall have the right to select the jobbers through whom the goods manufactured by it are to be distributed.

All orders placed with the Vendor by jobbers on behalf of the Company must at once be reported to the latter.

Eighth. The Company hereby agrees to sell and the Ven-
368 dor agrees to purchase —— shares of the common stock of the Company, for which stock the Vendor agrees to pay the sum of —— in cash as soon after the execution and delivery of this

agreement as the same may be demanded by the Company, but only if and when the entire share capital of the Company shall have been fully subscribed at not less than par.

The Vendor will, after paying for said shares of stock, endorse the certificates representing the same, and deliver the certificates so endorsed in blank unto the Company, upon the trust and agreement that the Company shall hold said certificates as security for the performance by the Vendor of each and all of the covenants and conditions of this agreement and that upon the refusal, neglect, or omission of the Vendor, its successors or assigns, to perform this agreement, or any part thereof, the said shares of stock and the certificates represented thereby shall be immediately sold by the Company at public or private sale, without notice, upon such terms and at such price as the Company or its officers may deem reasonable, and that the proceeds of the sale be paid into the treasury of the Company as agreed and liquidated damages to the Company for the breach of said agreement.

The parties hereto have fixed upon the said stock, and the proceeds thereof, as liquidated damages, because of the difficulty in establishing, in a court of law, the actual damage that would be suffered by the Company in the event of the refusal, neglect or omission to perform this agreement, and in order to avoid the difficulty of such proof.

In witness whereof, the Vendor and the Company have respectively caused this agreement to be executed by their respective Presidents and their respective corporate seals to be hereto attached pursuant to resolutions of their respective Boards of Directors, the day and year first above written.

SCHEDULE "A."

Referred to in the Foregoing Agreement and Forming Part Thereof.

Browns, listed at	4c	at	2c
Borders (2nd, only) listed at	15c	"	6
Whites, listed at	4½	"	2½c
2 B. Border, listed at	15	"	6
2 B. Bld. Border, listed at	20	"	8
369 1 B. Col. Border, listed at	20	"	6
1 B. Bld. Border, listed at	25	"	8
Whites, listed at	5c	"	2½
Whites, listed at	5½	"	3
2 B. Border, listed at	15	"	6
2 B. Bld. Border, listed at	20	"	8
1 B. Col. Border, listed at	20	"	6
1 B. Bld. Border, listed at	25	"	8
Whites, listed at	6½	"	3½
2 B. Col. Border, listed at	20	"	7
2 B. Bld. Border, listed at	25	"	9

1 B. Col. Border, listed at	25	"	7
1 B. Bld. Border, listed at	30	"	9
9 oz. Dark Whites &			
12 oz. Glimmers, listed at	7½	at	4c
2 B. Col. Border, listed at	20	"	8c
2 B. Bld " " "	25	"	10
1 B. Col. " " "	25	"	8
1 B. Bld. " " "	30	"	10
12 oz. Glimmers, listed at	9c	"	4½c
2 B. Col. Border, listed at	20	"	8c
2 B. Bld. " " "	25	"	10
1 B. Col. " " "	25	"	8
1 B. Bld. " " "	30	"	10
12 oz. Glimmers, listed at	10	is	4½c
2 B. Col. Border, listed at	20	"	8c
2 B. Bld. " " "	25	"	10
1 B. Col. " " "	25	"	8
1 B. Bld. " " "	30	"	10
10 oz. Bronzes " "	20	"	7
2 B. Bld. Bord. " "	25	"	10
1 B. Border " "	25	"	7
1 B. Bld. Bord. " "	30	"	10
10 oz. Bronzes " "	8c	"	4c
2 B. Border " "	25	"	7
1 B. Bld. Bord. " "	20	"	10
1 B. Border " "	30	"	7
1 B. Bld. Bord. " "	35	"	10
10 oz. Bronzes, listed at	9c	is	4½c
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2 B. Border " "	25	"	7
2 B. Bld. Bord. " "	30	"	10
1 B. Border " "	30	"	7
1 B. Bld. Bord. " "	35	"	10
12 oz. Bronzes, listed at	10c	"	4½
2 B. Border " "	30	"	10
2 B. Bld. Bord. " "	35	"	12½c
1 B. Border " "	35	"	10
1 B. Bld. Bord. " "	40	"	12½c
Emb. Bords " "	5 extra	"	2½
12 oz. Bronze-, listed at	11c	"	5c
2 B. Border " "	30	"	10
2 B. Bld. Bord. " "	35	"	12½c
1 B. Border " "	35	"	10
1 B. Bld. Bord. " "	40	"	12½c

12 oz. Bronzes, listed	at	12½c	"	5½c
2 B. Border	"	"	30	"	12
2B. Bld. Bord.	"	"	35	"	15
1 B. Border	"	"	40	"	12
1 B. Bld. Bord.	"	"	45	"	15
Emb. Bords	"	"	5 extra	"	2½ ex.
12 oz. Bronzes, listed	at	13½c	is	6½c
2 B. Border	"	"	30	"	12
2 B. Bld. Bord.	"	"	35	"	15
1 B. Border	"	"	40	"	12
1 B. Bld. Bord.	"	"	45	"	15
Emb. Bords	"	"	5 extra	"	2½
12 oz. Bronze-	"	"	15c	"	6½
2 B. Border	"	"	35	"	15
2 B. Bld. Bord.	"	"	40	"	18
1 B. Border	"	"	45c	"	15c
1 B. Bld. Bord.	"	"	50	"	18
Emb. Bords	"	"	5 extra	"	2½
12 oz. Bronzes,	"	"	18c	at	7-20
2 B. Border	"	"	35c	"	15
2 B. Bld. Bord.	"	"	40	"	18
1 B. Border	"	"	45	"	15
1 B. Bld. Bord.	"	"	50	"	18
Emb. Bronzes	"	"	11c	is	5c
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2 B. Border	"	"	30	"	10
2 B. Bld. Bord.	"	"	35	"	12½
1 B. Border	"	"	35	"	10
1 B. Bld. Bord.	"	"	40	"	12½
Emb. Bronzes,	"	"	21½	is	5½c
2 B. Border	"	"	35	"	15
2 B. Bld. Bord.	"	"	40	"	17½
1 B. Border	"	"	45	"	15
1 B. Bld. Bord.	"	"	50	"	17½
Emb. Bronzes, listed	at	13½	is	6c
2 B. Border	"	"	35	"	15
2 B. Bld. Bord.	"	"	40	"	17½
1 B. Border	"	"	45	"	15
1 B. Bld. Bord.	"	"	50	"	17½
Emb. Bronzes	"	"	15c	"	6½
2 B. Border	"	"	40	"	15
2 B. Bld. Bord.	"	"	45	"	18
1 B. Border	"	"	50	"	15
1 B. Bld. Bord.	"	"	55	"	18

Emb. Bronzes,	listed	at	18c	is 7.20
2 B. Border	"	"	40	" 15
2 B. Bld. Bord.	"	"	45	" 18
1 B. Border	"	"	50	" 15
1 B. Bld. Bord.	"	"	55	" 18

Plaint ingrains, ordinary shades,	listed at	12½c.	is 7½c.
Varnish Tiles, 20 in.,	listed at	20c	is 12c
Varnish Tiles, 22 in.	listed at	25	" 15c

On goods in regular lines not classified and not designated as Special or Exclusive, the Cost price allowed to Manufacturers shall be Road Price less First Class Jobber's discount and is 15 per cent. for assumed profit.

Special and Exclusive goods, Cost allowed to Manufacturers, 50 per cent. of Road Price.

SCHEDULE "B."

Referred to in the Foregoing Agreement, and Forming Part Thereof.

Selling Prices to Jobbers.

Discounts on Hangings.

372	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
Browns,	4	20	17½	15
Borders (2nd only)	15			
Whites,	4½	22½	20	17½
2 Bd. Bor.	15			
2 Bd. Bld. Bor.	20			
1 Bd. Col. Bor.	20			
1 Bd. Bld. Bor.	25			
Whites,	5	25	22½	20
	5½			
2 Bd. Bor.	15			
2 Bd. Bld. Bor.	20			
1 Bd. Col. Bor.	20			
1 Bd. Bld. Bor.	25			
Whites,	6½	27½	25	20
2 Bd. Col. Bor.	20			
2 Bd. Bld. Bor.	25			
1 Bd. Col. Bor.	25			
1 Bd. Bld. Bor.	30			
10 oz. Glimmer-	7½	30	25	20
2 Bd. Col. Bor.	20			
2 Bd. Bld. Bor.	25			
1 Bd. Col. Bor.	25			
1 Bd. Bld. Bor.	30			

	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
12 oz. Glimmer-	9	32½	27½	22½
2 Bd. Col. Bor.	20			
2 Bd. Col. Bor.	25			
1 Bd. Col. Bor.	25			
1 Bd. Bld. Bor	30			

	Price. Cents.	1st job. Per cent.	2nd job. Per Cent.	3rd job. Per cent.
12 oz. Glimmers	10	32½	27½	22½
2 Bd. Col. Bor.	20			
2 Bd. Bld. Bor.	25			
1 Bd. Col. Bor.	25			
1 Bd. Bld. Bor.	30			
10 oz. Bronzes,	7	30	25	20
2 Bd. Bor.	20			
2 Bd. Bld. Bor.	25			
1 Bd. Bor.	25			
1 Bd. Bld. Bor.	30			
10 oz. Bronzes	8	32½	27½	22½
2 Bd. Bor.	25			

373	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
1 Bd. Bld. Bor.	30			
1 Bd. Bor.	30			
1 Bd. Bld. Bor.	35			
10 oz. Bronzes,	9	35	30	25
2 Bd. Bor.	25			
2 Bd. Bld. Bor.	30			
1 Bd. Bor.	30			
1 Bd. Bld. Bor.	35			
Embossed,	11	37½	32½	27½
2 Bd. Bor.	30			
2 Bd. Bld. Bor.	35			
1 Bd. Bor.	35			
1 Bd. Bld. Bor.	40			
Plain 12 oz. Bronze-,	10	37½	32½	25
2 Bd. Bor.	30			
2 Bd. Bld. Bor.	35			
1 Bd. Bor.	35			
1 Bd. Bld. Bor.	40			
Embossed Borders,	5 extra			

	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
12 oz. Bronzes,	11	37½	32½	25
2 Bd. Bor.	30			
2 Bd. Bld. Bor.	35			
1 Bd. Bor.	35			

	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
1 Bd. Bld. Bor.	40			
12 oz. Bronzes,	12½	40	35	27½
2 Bd. Bor.	30			
2 Bd. Bld. Bor.	35			
1 Bd. Bor.	40			
1 Bd. Bld. Bor.	40			
Embossed Borders,	5 extra			

	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
Embossed Bronzes,	12½	40	35	27½
2 Bd. Bor.	35			
2 Bd. Bld. Bor.	40			
1 Bd. Bor.	45			
1 Bd. Bld. Bor.	50			

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	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
Embossed Bronzes,	13½	40	35	27 12
2 Bd. Bor.	35			
2 Bd. Bld. Bor.	40			
1 Bd. Bor.	45			
1 Bd. Bld. Bor.	50			
12 oz. Bronzes,	15	45	40	30
2 Bd. Bor.	35			
2 Bd. Bld. Bor.	40			
1 Bd. Bor.	45			
1 Bd. Bld. —	50			
Embossed Borders,	5 extra			
12 oz. Pl. Bronzes,	13½	40	35	27½
2 Bd. Bor.	30			
2 Bd. Bld. Bor.	35			
1 Bd. Bor.	40			
1 Bd. Bld. Bor.	45			
Embossed Borders,	5 extra			
Pl. Bronze 12 oz.	18	45	40	30
2 Bd. Bor.	35			
2 Bd. Bld. Bor.	40			
1 Bd. Bor.	45			
1 Bd. Bld. Bor.	50			

	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
Embossed Bronzes,	15	45	40	30
2 Bd. Bor.	40			
2 Bd. Bld. Bor.	45			
1 Bd. Bor.	50			
1 Bd. Bld. Bor.	55			

	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
Embossed Bronzes,	18	45	40	30
2 Bd. Bor.	40			
2 Bd. Bld. Bor.	45			
1 Bd. Bor.	50			
1 Bd. Bld. Bor.	55			
Plain Ingrains,	12½	30	25	20
Varnish Tiles, 20 oz.	20	30	25	20
Varnish Tiles 22 oz.	25	30	25	20
Special Goods,	...	30	25	20
Exclusive Goods,	...	20	20	20

Exclusive goods to be handled by the jobber in his retail business only.

375 On goods made by the Vendor, there shall be deducted from the net result, after deducting the above discounts, a deduction of 5 per cent. excepting on Plain Ingrains, Varnish Tiles, Special Goods and Exclusive Goods.

Terms of Sale.

Four (4) months note approved credit; or discounts at the rate of one per cent. per month for anticipated payment. Goods shipped on and after October 15th, on account of spring purchases, may be dated March 1st, four (4) months.

Equalization of Freights.

Freight on goods sold to jobbers to be equalized with New York and Philadelphia.

Schedule of Discounts to Jobbers.

On Borders in Regular Lines, Not Including Exclusive Goods.

First grade. Cents.	Per cent.	Second grade. Per cent.	Third grade. Per cent.
15	30	30	25
18	40	35	30
20	40	35	30
22	40	35	30
25	40	35	30
30	40	35	30
35	40	35	30
40	45	40	35
45	45	40	35
50	45	40	35
60	50	45	40

SCHEDULE C.

Referred to in the Foregoing Agreement and Forming Part Thereof.

Selling Prices to Other Than Jobbers.

		Cents.
	Browns,	4
376	Borders (2nd only)	15
	Whites,	4½
2 Bd. Bor.		15
2 Bd. Bld. Bor.		20
1 Bd. Col. Bor.		20
1 Bd. Bld.		25
Whites,		5 and 5½
2 Bd. Bor.		15
2 Bd. Bld. Bor.		20
1 Bd. Col. Bor.		20
1 Bd. Bld. Bor.		25
Whites,		6½
2 Bd. Col. Bor.		20
2 Bd. Bld. Bor.		25
1 Bd. Col. Bor.		25
1 Bd. Bld. Bor.		30
9 oz. Dark Whites & 12 oz. Glimmers,		7½
2 Bd. Col. Bor.		20
2 Bd. Bld. Bor.		25
1 Bd. Col. Bdr.		25
1 Bd. Bld. Bor.		30
12 oz. Glimmers,		9
2 Bd. Col. Bor.		20
2 Bd. Bld. Bor.		25
1 Bd. Col. Bor.		25
1 Bd. Bld. Bor.		30
12 oz. Glimmers,		10
2 Bd. Col. Bor.		20
2 Bd. Bld. Bor.		25
1 Bd. Cor. Bor.		25
1 Bd. Bld. Bor.		30
10 oz. Bronzes,		7
2 Bd. Bor.		20
2 Bd. Bld. Bor.		25
1 Bd. Bor.		25
1 Bd. Bld. Bor.		30
10 oz. Bronzes,		8
2 oz. Bor.		25
2 oz. Bld. Bor.		30
1 oz. Bor.		30
1 oz. Bld. Bor.		35
10 oz. Bronzes,		9
2 Bd. Bor.		25

2 Bd. Bld. Bor.		30
1 Bd. Bor.		30
1 Bd. Bld. Bor.		35
Embossed,		11
377	2 Bd. Bor.	30
	2 Bd. Bld. Bor.	35
1 Bd. Bor.		35
1 Bd. Bld. Bor.		40
Pl. 12 oz. Bronzes,		10
2 Bd. Bor.		30
2 Bd. Bld. Bor.		35
1 Bd. Bor.		35
1 Bd. Bld. Bor.		40
Embossed Borders,		5 extra
12 oz. Bronzes,		11
2 Bd. Bor.		30
2 Bd. Bld. Bor.		35
1 Bd. Bor.		35
1 Bd. Bld. Bor.		40
12 oz. Bronzes,		12½
2 Bd. Bor.		30
2 Bd. Bld. Bor.		35
1 Bd. Bor.		40
1 Bs. Bld. Bor.		40
Embossed Borders,		5 extra
Embossed Bronzes,		12½
2 Bd. Bor.		35
2 Bd. Bld. Bor.		40
1 Bd. Bld. Bor.		45
1 Bd. Bld. Bor.		50
Embossed Borders,		13½
2 Bd. Bor.		35
2 Bd. Bld. Bor.		40
1 Bd. Bor.		45
1 Bd. Bld. Bor.		50
12 oz. Bronzes,		15
2 Bd. Bor.		35
2 Bd. Bld. Bor.		40
1 Bd. Bor.		45
1 Bd. Bld. Bor.		50
Embossed Border-,		5 extra
12 oz. Pl. Bronzes,		13½
2 Bd. Bor.		30
2 Bd. Bld. Bor.		35
1 Bd. Bor.		40
1 Bd. Bld. Bor.		45
Embossed Borders,		5 extra
12 oz. Pl. Bronzes,		18
2 Bd. Bor.		35
2 Bd. Bld. Bor.		40
1 Bd. Bor.		45

378	1 Bd. Bld. Bor.	50
	Embossed Bronzes,	15
	2 Bd. Bor.	40
	2 Bd. Bld. Bor.	45
	1 Bd. Bor.	50
	1 Bd. Bld. Bor.	55
	1 Bd. Bld. Bor.	*55*
	Embossed Bronzes,	18
	2 Bd. Bor.	40
	2 Bd. Bld. Bor.	45
	1 Bd. Bor.	50
	1 Bd. Bld. Bor.	55
	Plain Ingrains,	12½
	Varnish Tiles 20 oz.	20
	Varnish Tiles 22 oz.	25

Ingrain Borders according to value and selling quality.

Special Goods according to value and selling quality.

Exclusive Goods according to value and selling qualities, and will compromise goods not handled by the Jobbers, excepting in his retail business.

On goods made by the Vendor these shall be deducted a discount of 5 per cent. This discount, in the case of quantity lots, shall be deducted from the net amount arrived at after deducting the quantity discount.

Terms of Sale.

Four (4) months note, approved credit; or discount at the rate of one per cent. per month for anticipated payment. Goods shipped on and after October 15th, on account of Spring purchases, may be dated March 1st, four months.

Equalization of Freights.

Freights on goods sold to Regular Dealers to be equalized with New York, Philadelphia, Baltimore, Pittsburg, Buffalo, Troy, Albany, Portland, Me., Boston, Rochester, Scranton, Cleveland, Toledo, Cincinnati, Chicago, St. Louis, Detroit.

Quantity Purchasers.

When goods are purchased in the following quantities they will be subject to the following discounts:

379 Up to 5½c. inclusive-600 rolls, 5 per cent. 1200 rolls, 10 per cent.

6c. to 9c. inclusive 300 roll- 7½ per cent. 600 rolls 12½ per cent.

10c. to 15c. inclusive 200 rolls 10 per cent. 400 rolls 15 per cent.

16c. and up 100 rolls 10 per cent. 200 rolls 15 per cent.

Discounts on Borders and Ceiling Papers follow the discounts on the Hangings they match.

Plain Ingrains.

Varnish Tiles 200 rolls or more, 10 per cent.

Ingrain Borders 26 rolls of a kind, 10 per cent.
Ingrains Borders 50 rolls or over, 15 per cent.

And afterwards, to-wit: on the 12th day of December A. D. 1901, an Entry was made upon the Journal of said court clothed in the words and figures following, to-wit:

Entry Journal 6, 353.

Default for Reply herein is hereby set aside and leave is hereby granted to file a Reply in this cause forthwith and the same is filed.

And afterwards, to-wit: on the 12th day of December A. D. 1901 a Replication was filed in the clerk's office of said court clothed in the words and figures following, to-wit:

Replication.

THE CONTINENTAL WALL PAPER CO., Plaintiff,
vs.
THE LEWIS VOIGHT & SONS CO., Defendant.

Replication.

1.

This plaintiff replying unto the Second Defense in the answer herein.

380 Denies that wall paper is an article and commodity of general necessity and use among the people of the United States and of foreign countries, or that it is used and sold for the preservation of buildings and dwelling houses.

It admits that in the year 1898 the persons, firms and corporations referred to in the answer as "Original Owners A" were engaged in the manufacture and sale of wall paper at the localities mentioned in said answer, but denies that they were the largest and most important manufacturers of wall paper in the United States, or that they controlled 85 per cent. of the business thereof, or approximately that percentage thereof, of that they entered into a combination or trust agreement of any kind whatsoever; or that said "Original Owners Class A" were to be the main subscribers in agreed proportions, as individuals, partners or stockholders, or otherwise, to the capital of the so-called The National Wall Paper Company referred to in said answer.

It admits that on or about the 2nd day of June, 1892, a corporation known as The National Wall Paper Company was organized under the laws of the State of New York, but denies that said corporation was formed for the purpose of carrying out any agreement between said "Original Owners Class A"; or that any combination or trust agreement was made or carried out between said "Original Owners Class A" or that The National Wall Paper Company was organized for the purpose of restraining the trade and commerce in

wall paper among the several states and territories or with foreign nations; or to monopolize or attempt to monopolize the trade and commerce in wall paper among the several states and territories or with foreign nations; or to increase, regulate dictate or fix the price of wall paper without reference to its reasonable or market value; or to fix or limit the amount and quantity of wall paper to be sold in the United States and the several states and territories thereof; or to prevent competition in the sale of wall paper in the several states and territories or in foreign countries; or to establish and settle the price of wall paper between said "Original Owners Class A," or any of them, and the said The National Wall Paper Company, so as to preclude a free and restrained competition among them in the sale of wall paper, or for any like purpose; of to combine and unite the interest which the said "Original Owners Class A" had or had had in connection with the manufacturer and sale of wall paper in such manner as to affect the price thereof or unreasonably enhance the same; or to bring into said combination all the other manu-
381 facturers of wall paper within the United States or for any of said purposes.

The plaintiff denies that in pursuance of any agreement or combination for any of the aforesaid purposes, The National Wall Paper Company did after its organization, attempt to carry out any of said purposes that in the — 1898 it controlled 55 per cent. of the business in wall paper in the United States, or approximately that proportion.

It admits that the persons, firms and corporations, referred to in the answer herein as "Original Owners Class B" were engaged in the manufacture of wall paper, but denies that they conducted 45 per cent. of the wall paper business in the United States, or that they, for the purpose of protecting themselves against The National Wall Paper Company, organized an association or club known as The Wall Paper Manufacturers Club; or that together with The National Wall Paper Company they controlled and conducted 98 per cent. of the business of the manufacture and sale of wall paper in the United States, or approximately that percentage thereof.

It denies that the said The National Wall Paper Company and the "Original Owners Class A" entered into any combination or trust agreement with the "Original Owners Class B" for the purpose of organizing The Continental Wall Paper Company, the plaintiff herein, but admits that The Continental Wall Paper Company was organized under the laws of the State of New York in the year 1898 with a capital stock of $200,000, divided into 16,000 shares of the par value of $12.50 each, and that The National Wall Paper Company became the owner of $110,000 of said capital stock and paid therefor in cash, and that the remainder of said capital stock was acquired and purchased by various other persons, firms and corporations and paid for by them in cash.

The plaintiff admits that each of the "Original Owners Class B" entered into a contract with the Continental Wall Paper Company which was in substance the same as Exhibit 1 annexed to the answer herein, the exact terms of which are not, however, set forth in said

Exhibit 1 and the plaintiff prays leave to refer to the original contract of which said exhibit purports to be a copy.

It denies that it was agreed as alleged in the said answer that The Continental Wall Paper Company should by means of any disguise as to the real nature of the transaction exact or force from all buyers of wall paper referred to as "Jobbers," an agreement, in writing, to buy goods only from the said The Continental Wall Paper
382 Company, or from manufacturers who were stockholders therein, or at prices as fixed in Schedule B attached to said agreement; nor was it agreed as alleged in the answer that said The Continental Wall Paper Company should by means of any disguise of the real nature of the transaction exact from them an agreement not to sell to dealers other than Jobbers goods at lower prices or upon better or more favorable terms than those shown in Schedule C. attached to said agreement under the penalties referred to in said answer; or that it was agreed as alleged in the answer that the so-called "Vendors" should by means of any disguise of the real nature of the transaction exact or force from all buyers (referred to as "Road Buyers," who were quantity buyers,) an agreement in writing with such vendor not to re-sell such goods on terms better or more favorable than those specified in Schedule C attached to said agreement, under the penalties therein provided.

It denies that all dealers in wall paper in the United States were arbitrar-ly divided in accordance with any agreement into "Jobbers" and Road Buyers," or that "Jobbers" were arbitrarily divided into the three classes referred to in the answer herein, or that "Road Buyers" were arbitrarily divided into the classes referred to in said answer; or that "Road Buyers" and other dealers were divided into classes as alleged in said answer.

The plaintiff admits that an agreement was entered into between The Continental Wall Paper Company and various Jobbers, in substantially the form set forth in the answer herein, but denies what purports to be — copy of said agreement is in all respects an accurate copy thereof and prays leave to refer to the original agreement entered into between said The Continental Wall Paper Company and *and* the jobbers executing the same.

It denies that the Schedule- attached to the said answer were to be prepared on the basis specified in said answer.

It admits that the form of agreement as to road buyers in quantities was in substantially the words and figures set forth in the answer herein, but denies that what purports to be a copy thereof is in all respects correct and begs leave to refer to the original agreement entered into between it and the so-called road buyers in quantity.

It denies that any prices were exacted from other dealers or purchasers of wall paper in the United States by any so-called "Vendor," "Jobbers" or "Quantity Buyers."

The plaintiff further denies that the object and purpose of the agreements referred to in the said answer were to form a trust
383 or monopoly of the business of manufacturing, buying and selling wall paper in the United States as carried on and conducted in the several states and territories thereof and with foreign

nations, or to dictate the conduct and management of the said business.

It further denies that any combination or trust agreement was made or carried out or that the Continental Wall Paper Company was organized for any or either of the purposes specified in said answer; or that the agreements referred to in the said answer between the so-called "Vendors" and the plaintiff were drawn for the purpose or with the intent of disguising the real nature of the transaction or the real purpose thereof.

The plaintiff alleges that the true nature and character of said contracts were set forth in the said agreements; that they were in all respects valid and were not executed for any unlawful purpose or intent; that it was not intended or proposed by the plaintiff or by the "Vendors" with whom the aforesaid agreements were made to make any division or pool of the business between the "Vendors," or to limit the production or to prevent the enlargement of the manufacturing facilities of any of the said "Vendors."

The plaintiff further denies that in pursuance of any agreement or combination, or for any of the purposes set forth in the answer herein, it attempted during the years 1898 to 1899 to carry out any of the unlawful purposes set forth in the said answer, or transacted any business in the manner or for the purpose set forth in the said answer.

The plaintiff further denies that in carrying on its business it forced the defendant or any other dealer in the United States, in September or October, 1898, or at any other time, who desired to procure wall paper, to purchase the same at any unreasonable, excessive or unjust prices, or that it refused to allow the defendant or any other dealer, to purchase any wall paper in the United States, or carry on any business in the United States.

The plaintiff admits that the defendant signed a contract for the purchase of wall paper from it after July 20th, 1898 and prior to July 1st, 1899 but denies that the prices fixed for said wall paper in said agreement were established or determined in pursuance of any combination or trust agreement or were unreasonably unjust or excessive.

The plaintiff denies that in transacting its business it conducted the same under or in pursuance of any combination or trust
384 agreement as set forth in the said answer, or for any of the purposes specified therein, or contrary to the provisions of the acts of the Legislature of the State of New York (Laws of 1897 Vol. 1, Chapter 383), or contrary to the provisions of the laws of the State of Ohio, or contrary to the Laws of the United States, or contrary to any other statutes or laws.

The plaintiff denies that the contracts and agreements between it and the defendant were to be carried out and performed in the State of Ohio, but alleges that the said contract was entered into and was to be performed in the State of New York.

The plaintiff denies that the cause of action set forth in its petition is an attempt to enforce, carry out or recover upon any unlawful

agreement or contract, or that the prices sought to be recovered for the merchandise referred to in the petition are unreasonable or excessive or above the fair market value of said merchandise in any sum whatsoever.

Replying to the Third Defense and Counterclaim set forth in the answer herein, the plaintiff repeats, adopts and makes part hereof all of the allegations hereinbefore set forth, and denies that any of the matters or things stated in the answer are contrary to law or the Act of Congress of the United States of July 2nd, 1890, referred to in said Third Defense and Counterclaim, or that by reason of the matters or things set forth in the said answer the defendant has been damaged or injured in any sum whatsoever.

Wherefore, the plaintiff asks for judgment as prayed for in its petition and the amendment thereof, heretofore filed herein.

GUGGENHEIMER, UNTERMEYER & MARSHALL AND
JOSEPH WILBY,
Attorneys for Plaintiff.

STATE OF NEW YORK, *County of New York, ss:*

Robt. J. Dyatt, being first duly sworn says that he is the Secretary of said Plaintiff, The Continental Wall Paper Company, and that the statements contained in the foregoing Replication are true, as he verily believes.

ROBERT J. DYATT.

Subscribed in my presence and sworn to before me, this fourth day of December, A. D. 1901.

RICHARD L. DAVISON,
[SEAL.] *Notary Public, Kings Co.*

Certificate filed in New York Co.

385 And afterwards, to-wit; on the 22nd day of August, A. D. 1902, a motion was filed in the Clerk's Office of said Court, clothed in the words and figures following, to-wit:

Motion.

No. 5421.

THE CONTINENTAL WALL PAPER COMPANY, Plaintiff,
vs.
THE LEWIS VOIGHT & SONS COMPANY, Defendant.

Motion for Leave to Withdraw, etc.

Now comes the plaintiff above named, and moves the court for leave to withdraw its answer and reply to the answer and cross-

petition of the defendant heretofore filed herein, and for leave to said plaintiff to file a demurrer to said answer and cross-petition of the defendant.

CONTINENTAL WALL PAPER COMPANY,
By KITTREDGE & WILBY AND
GUGGENHEIMER, UNTENMEYER &
MARSHALL,
Its Attorneys.

And afterwards, to-wit: on the 25th day of October, A. D. 1902, an Entry was made upon the Journal of said court clothed in the words and figures following, to-wit:

Entry Journal 6, Page 552.

This day came plaintiff and defendant, by Joseph Wilby and Harland Cleveland their attorneys, and for good cause shown, plaintiff is given leave to withdraw its motion filed August 22nd, 1902, which is accordingly done, and defendant is given leave to file forthwith, an Amended Answer and Cross-Petition.

And afterwards, to-wit: on the 25th day of October, A. D., 1902, the following Amended Answer and Cross-Petition was filed in the Clerk's Office of the Court aforesaid, which said Amended Answer and Cross-Petition is clothed in the words and figures, following, to-wit:

Amended Answer and Cross-Petition.

386 UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division:

No. 5421.

CONTINENTAL WALL PAPER COMPANY, Plaintiff,
vs.
THE LEWIS VOIGHT & SONS COMPANY, Defendant.

Amended Answer and Cross-Petition.

The defendant, by leave of the court, files this its Amended Answer and Cross-Petition in the above entitled cause and says:

1st Defense. It admits that the Lewis Voight & Sons Company is a corporation created, organized and existing under the laws of the State of Ohio, and a citizen and resident of said State and that the plaintiff purported to be at the time set forth in said petition and amendment to the petition and is ostensibly a corporation created, organized and existing under the laws of the State of New York and a citizen and resident of said State.

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Defendant further admits that merchandise of the character, to-wit, wall paper and in quantities, to-wit, the number of rolls described in the exhibits attached to the petition and amendment to the petition, was supplied to the defendant between July, 1898, and July 1st, 1899, by the factories owned and operated by the individuals, firms and corporations shown on the face of said exhibits; but the defendant denies each and every other allegation in said petition and amendment to the petition contained.

2nd Defense. The defendant for a second defense further says: That it has been for ten years last past, and was at the time stated in said petition and amendment to the petition and hereinafter stated and is now, engaged in the business of buying, selling and dealing generally throughout the State of Ohio, and other states and territories of the United States, in wall paper of all kinds, with its principal office and place of business in Cincinnati, Ohio.

That said wall paper is an article and commodity of general necessity and use among the people of the United States and of foreign countries and as such was, and is, used and sold everywhere for the preservation, protection and decoration of buildings and dwelling houses;

387 That the business of the defendant has been during its existence quite extensive and one of the largest of its kind in the United States and has consisted of what was generally called that of a "jobber" or "wholesaler;" that is to say, the defendant at the beginning of each season which commences in September and closes the first of July following, according to the custom of the trade, has bought from the various individuals, firms and corporations engaged in the various states of the United States hereinafter set forth, in the manufacture of wall paper, said merchandise to be manufactured for it from samples submitted at the beginning of said son in wholesale lots and to be shipped to Cincinnati, Ohio, and there has re-sold the same from time to time to retail dealers throughout the State of Ohio and other states and territories of the United States;

That on, and prior to, the first day of July, 1898, the National Wall Paper Company was the owner of factories for the manufacture of wall paper in the following Cities and States, namely; the Cities of New York, Buffalo and Brooklyn, all in the State of New York; in the City of Philadelphia in the State of Pennsylvania; in the City of New Brunswick in the State of New Jersey; in the City of Chelsea in the State of Massachusetts; and the following named persons and corporations were the owners of factories for the manufacture of wall paper in the following named localities in the States mentioned, to-wit:

Beck and Company, New York, State of New York.
Henry Gledhill and Company, New York, State of New York.
M. H. Birge and Sons, Buffalo, State of New York.
The Robert Graves Company, Brooklyn, State of New York.
Carey Brothers, Philadelphia, State of Pennsylvania.
R. S. Hobbs and Company, New York, State of New York.

Creswell and Washburn, Philadelphia, State of Pennsylvania.
Howell and Brothers, Limited, Philadelphia, State of Pennsylvania.
F. E. James Company, New York, State of New York.
Janeway and Carpender, New Brunswick, State of New Jersey.
Janeway and Company, New Brunswick, State of New Jersey.
Keystone Wall Paper Company, Philadelphia, State of Pennsylvania.
388 William H. Mairs and Company, Brooklyn, State of New York.
Nevius and Havalin, New York, State of New York.
W. M. Peak, Brooklyn, State of New York.
Thomas Strahan and Company, Chelsea, State of Massachusetts.
Warren Fuller and Company, New York, State of New York.
All of whom were controlled and represented by said The National Wall Paper Company, and,
William Bailey and Sons, Cleveland, in the State of Ohio.
Benton, Heath & Company, Hoboken, in the State of New Jersey.
Columbia Wall Paper Company, Philadelphia, in the State of Pennsylvania.
Conowingo Wall Paper Company, Baltimore, in the State of Maryland.
Corey-Heller and Company, Newark, in the State of New Jersey.
William Campbell and Company, New York, in the State of New York.
Gossler and Wilt Wall Paper Company, Philadelphia, in the State of Pennsylvania.
George Halbert, Brooklyn, in the State of New York.
Hoefer, Meinken and Baeck Company, Nepara Park, in the State of New York.
Johnston Wall Paper Company, Johnstown, in the State of Pennsylvania.
Middletown Wall Paper Company, Boston, in the State of Massachusetts.
Philadelphia Wall Paper Mills, Philadelphia, in the State of Pennsylvania.
Standard Wall Paper Mills, Philadelphia, in the State of Pennsylvania.
The Tarrytown Wall Paper Company, Tarrytown, in the State of New York.
Thomas and Davis Company, Newark, in the State of Delaware.
Williamson Wall Paper Company, Long Island City, in the State of New York.
York Card and Paper Company, York, in the State of Pennsylvania.
York Wall Paper Company, York, Pennsylvania.
All of said companies and firms were engaged in the manufacture of wall paper, and in selling their product in the States where their said manufactories were situated, and in all the other
389 States and Territories of the United States, and in foreign countries, and were, each and all, engaged in commerce be-

nally as dividends upon said stock, but in reality, in proportion to their respective holdings as aforesaid, and that said committee of said corporation and said firms, calling themselves such directors, should regulate all the matters hereinbefore averred, prevent competition between said corporations and firms, limit production and enhance prices, and close all channels by which the consumer or retailer could obtain wall paper from the producers thereof.

In pursuance of said agreement, said plaintiff was nominally incorporated with the stock aforesaid, divided into the number of shares aforesaid, of the par value aforesaid, which were divided among the parties to said agreement aforesaid, in the manner aforesaid, and said contracts signed by said The National Wall Paper Company, and said persons and corporations, being, at once, subscription for stock by said so-called vendors, the acceptance of such subscription by said the Continental Wall Paper Company, and by it, nominally, each so-called vendor sold unto the company, and
392 the latter agreed to purchase, the entire product of wall paper manufactured by each of said vendors for the period from July 20th, A. D. 1898, to the first day of July, A. D. 1899.

Said contract further fixed prices at which the merchandise should be nominally sold to the company, said prices being the cost of production with a slight profit added thereto, sufficient to cover incidental expenses merely. The prices at which said goods were to be nominally sold by said so-called vendors to said company, are set forth in the schedule attached to said "Exhibit 1," and marked "A."

Said agreement further nominally provided that the goods pretended to be acquired by the company, from the so-called vendor, which were to be sold by jobbers, should be so sold by the company and not by the vendor, for the account of the company but that the goods acquired by the company from the so-called vendor, which should be sold to wholesalers other than jobbers, should be sold by the so-called vendor for the account of the company.

The schedules attached to said agreement contained a list of prices for all commodities in the wall paper line, which were called "List" or "Road Prices," and said contract provided that sales made to jobbers should be made at discounts from said "List" or "Road Prices" fixed in the schedule marked "B," annexed to said "Exhibit 1," but that, in all cases in which the goods were manufactured at places other than the Cities of New York or Philadelphia, and sold to jobbers, the vendor should equalize the freights with either of said cities, out of the proceeds receivable for such goods.

In reality, the agreement was and so the business was carried on, that the manufacturers should maintain sample rooms and selling agents, and should solicit and receive the orders from all wholesalers, whether jobbers or so-called "Road" or "Quantity Buyers"; that the entire business should be done by said so-called vendor but payments should be made by the jobbers, to the so-called Company, and the wholesalers, other than jobbers, directly to the so-called vendors.

Said contract further provided, in order to protect said corporations and firms against competition from each other, and to insure against violation of said agreement or any of them, that, from time

to time, invoices should be supplied, at once to the customers and to the Company, upon shipment and delivery of such goods, specifying quantities and road prices; that each vendor should furnish to the Company, at periods stated, just, true and sworn state-
393 ments of all shipments and deliveries of merchandise made by the vendors direct to the purchasers, which statement should contain the names of the purchasers, the character of the goods sold, and the prices at which they were sold, so that the Company might receive the difference between the prices at which the goods were nominally billed to said Company, and at which they were sold to the purchaser, to the end that this difference, being the net profits derived from such purchase and sale, should be divided among such corporations and firms, in proportion to the capacity of their respective businesses, determined as aforesaid, without regard to the amount sold by each.

The prices at which, and the terms upon which, goods were to be sold by the vendors to all wholesalers other than jobbers, were designated "Road" or "List" prices, and were contained in the Schedule marked "C," annexed to said "Exhibit 1," and forming a part thereof.

For the further purpose of carrying out said agreement, and ascertaining said net profits, and for further disguising the real nature of the transaction, it was provided that the so-called vendor should receive, from sales made by it to so-called "Quantity Buyers," the difference between the discounts allowed to those designated in the classification hereinbefore referred to as "Second Class Jobbers" and the discounts provided in said agreement to be made to purchasers styled, in said Schedules, "Quantity Buyers" in which the vendor is allowed the quantity discount, except that, where special and exclusive goods were sold, there should be an allowance of Thirty (30 *per cent.*) per cent. discount to said vendor.

Said agreement further stipulated that the prices of goods, as fixed by said Schedules A. and C. might be altered from time to time, but the discounts allowed to jobbers should not be altered at any time during the term of the agreement.

Said written contract further provided that the so-called vendor should make collections of accounts for goods sold to wholesalers other than the jobbers, but that the Company should collect the proceeds of sales to the jobbers, and that accounts should be stated between the so-called vendors and the Company at stated periods, and the account accompanied by payment by the so-called vendor, to the so-called Company, of the difference between the prices at which the goods were to be billed to the Company and the prices at which the so-called vendors had agreed to charge the "Quantity Buyers."

394 It was further stipulated in said agreement, that monthly divisions should be made by said Company of at least Thirty (30 *per cent.*) per cent. of the "Road Prices" of goods shipped to jobbers by the Company.

For the further purpose of protecting said corporations and firms and individuals from each other, preventing and stifling competition,

enforcing said combination, trust and monopoly, each of said corporations and vendors gave the Company the right, and made it the duty of the Company, to audit the books of account of said so-called vendors, at such times and in such manner as the Company might, from time to time deem necessary or proper. It was further stipulated that this right to examine and audit the books was of the essence of the agreement, and that a failure on the part of the so-called vendor, to permit the same, should operate as a breach of the contract, entitling the Company to abrogate the agreement, to recover such damages as it might be able to establish and to the forfeiture of the stock held by said vendor in such Company.

It was further provided that said so-called Company should appoint an Auditing Committee from its Directors, which should establish such a system of book-keeping as it thought advisable.

Nominally to comply with the laws of the several States, but in reality to limit production it was further provided that none of the factories of said corporations or firms, should be operated more than ten (10) hours a day; that the manufacturing facilities of the so-called vendors should not be enlarged, but that the so-called vendors might substitute new machinery of the same capacity for that which might become worthless through wear, destruction by fire, or other casualty.

It was further provided that said plaintiff had the option of buying the print rollers discarded by the so-called vendors, but could not sell the same to any other manufacturer or dealer.

It was further stipulated that the power to classify the jobbers and wholesalers, and the discounts to which they were entitled was handed over to the Company and its so-called Board of Directors.

It was further required that all orders placed with the so-called vendor by jobbers should be at once reported to the Company.

It was further stipulated that the certificates of stock so to be subscribed for and paid for in cash by said so-called vendors, should be at once endorsed in blank and delivered to the Company
395 upon the trust and agreement that the Company should hold said certificates as security for the performance by each of said corporations and persons, of all of said stipulations, and that, on breach of any one of them, the stock should be immediately sold by the company at public or private sale, without notice, upon such terms and at such prices as the Company, or its officers might deem reasonable and the proceeds of said sale be held by the Company as liquidated damages for such breach.

It was further stipulated by said agreement that the Company had a right to two (2) renewals of said contract for one (1) year each; provided that, if the Company elected so to do, it should so signify in writing, to the so-called vendor, before the first day of June, next preceding the renewal term, and further provided that such election to renew should be accompanied by the written consents of all the registered holders of stock of the Company, including that of the so-called vendor.

At the time of the formation of said combination and trust, John Waldron and Son, and the Kankanna Machine Company were the

only manufacturers in the United States of Wall Paper manufacturing machinery in the United States, having their factories, the one in New Brunswick, New Jersey, and the other in Kankanna, Wisconsin, and were engaged in manufacturing wall paper machinery in the said States and the other States of the United States and in foreign countries.

In further carrying out said combination and trust, and with the intent and purpose herein set forth, agreements were made between said manufacturers of machinery and said plaintiff, by which for a certain consideration, said manufacturers of machinery agreed, during the existence of plaintiff, to sell wall paper manufacturing machinery only to it and the members of said combination and not to any new mills desiring to start.

It was further a part of said agreements, though not reduced to writing, save as is set forth in said Exhibit that all jobbers and other wholesalers of wall paper should be forced to sign an agreement, binding themselves to purchase their entire stock of wall paper, nominally either from plaintiff or from said corporations or firms, at prices fixed in said "Exhibit 1" and that they should only sell at prices fixed in the Schedules attached to said "Exhibit 1," under the penalty which the combination of all of said corporations and firms enabled them to enforce, that such jobbers or wholesalers, in case of refusal to accede to the terms so imposed, or in case of violation thereof, should be unable to buy wall paper; should be
396 driven out of business, and should sacrifice the good will and capital therein invested.

Defendants aver that said formation of so-called corporation; said subscription for stock; the election of so-called Directors, and all matters pertaining to said so-called incorporation of plaintiff, was but a sham, and a disguise, the more effectually to carry out the scheme aforesaid, and that the real parties to the transaction aforesaid were said corporations, and firms hereinbefore named, and they alone are the real parties in interest in all sales of wall paper made since the formation of said plaintiff, and the real parties in interest in this action.

3rd Defense. The defendant for a third defense further says: That it has been for ten years last past, and was at the time stated in said petition and amendment to the petition *and* hereinafter stated and is now, engaged in the business of buying, selling and dealing generally throughout the State of Ohio, and other states and territories of the United States, in wall paper of all kinds, with its principal office and place of business in Cincinnati, Ohio.

That said wall paper is an article and commodity of general necessity and use among the people of the United States and foreign countries and as such was, and is, used and sold everywhere for the preservation, protection and decoration of buildings and dwelling houses.

That the business of the defendant has been during its existence quite extensive and one of the largest of its kind in the United States and has consisted of what was generally called that of a "jobber" or "wholesaler"; that is to say, the defendant at the beginning of each

season which commences in September and closes the first of July following, according to the custom of the trade, has bought from the various individuals, firms and corporations engaged in the various States of the United States, hereinafter set forth, in the manufacture of wall paper said merchandise to be manufactured for it from samples submitted at the beginning of said season in wholesale lots and to be shipped to Cincinnati, Ohio, and there has resold the same from time to time to retail dealers throughout the State of Ohio and other states and territories of the United States.

That on, and prior to, the first day of July, 1898, the National Wall Paper Company was the owner of factories for the manufacture of wall paper in the following Cities and States, namely: the Cities of New York, Buffalo and Brooklyn, all in the State of New York; in the City of Philadelphia in the State of Pennsylvania; in the City of New Brunswick in the State of New Jersey; in the City of Chelsea in the State of Massachusetts; and the following
397 named persons and corporations were the owners of factories for the manufacture of wall paper in the following named localities in the States mentioned, to-wit:

Beck and Company, New York, State of New York.

Henry Gledhill and Company, New York, State of New York.

M. H. Birge and Sons, Buffalo, State of New York.

The Robert Graves Company, Brooklyn, State of New York.

Carey Brothers, Philadelphia, State of Pennsylvania.

R. S. Hobbs and Company, New York, State of New York.

Creswell and Washburn, Philadelphia, State of Pennsylvania.

Howell and Brothers, Limited, Philadelphia, State of Pennsylvania.

F. E. James Company, New York, State of New York.

Janeway and Carpenter, New Brunswick, State of New Jersey.

Janeway and Company, New Brunswick, State of New Jersey.

Keystone Wall Paper Company, Philadelphia, State of Pennsylvania.

William H. Mairs and Company, Brooklyn, State of New York.

Nevius and Havalin, New York, State of New York.

W. M. Peak, Brooklyn, State of New York.

Thomas Strahan and Company, Chelsea, State of Massachusetts.

Warren Fuller and Company, New York, State of New York, all of whom were controlled and represented by the said The National Wall Paper Company, and,

William Bailey and Sons, Cleveland, in the State of Ohio.

Benton Heath & Company, Hoboken, in the State of New Jersey.

Columbia Wall Paper Company, Philadelphia, in the State of Pennsylvania.

Conowingo Wall Paper Company, Baltimore, in the State of Maryland.

Corey-Heller and Company, Newark, in the State of New Jersey.

William Campbell and Company, New York, in the State of New York.

Gossler and Wilt Wall Paper Company, Philadelphia, in the State of Pennsylvania.

George Halbert, Brooklyn, in the State of New York.

398 Hoefer, Meinken and Baeck Company, Nepara Park, in the State of New York.

Johnstown Wall Paper Company, Johnstown, in the State of Pennsylvania.

Middletown Wall Paper Company, Boston, in the State of Massachusetts.

Philadelphia Wall Paper Mills, Philadelphia, in the State of Pennsylvania.

Standard Wall Paper Mills, Philadelphia, in the State of Pennsylvania.

The Tarrytown Wall Paper Company, Tarrytown, in the State of New York.

Thomas and Davis Company, Newark, in the State of Delaware.

Williamson Wall Paper Company, Long Island City, in the State of New York.

York Card and Paper Company, York, in the State of Pennsylvania.

York Wall Paper Company, York, Pennsylvania.

All of said Companies and firms were engaged in the manufacture of wall paper, and in selling their product in the States where their said manufactories were situated, and in all the other states and territories of the United States, and in foreign countries, and were, each and all engaged in commerce between the states and territories and with foreign nations, and they produced and sold upwards of ninety-eight (98 per cent.) per cent. of all the wall paper manufactured and sold in the several states and territories of the United States.

Contriving and intending and conspiring with each other to form a combination and trust by which to limit the production of wall paper in the United States and also to enhance the price thereof to the jobbers, the wholesalers, the retailers and the consumers of wall paper, which is an article of commodity of general necessity and use among the United States and foreign countries, and, as such, was and is used and sold everywhere for the preservation, protection and decoration of buildings, and dwelling houses; and, contriving and intending and conspiring with each other to unlawfully control and restrain trade and commerce between the several states and territories of the United States, and with foreign countries, the firms and corporations hereinbefore mentioned, agreed with each other, that, while said corporations and persons retain the ownership of their several plants and business, and preserve and continue their separate

399 identities and operate said several manufactories and business as before, the control of said several businesses, and all matters relating to and affecting the production of said establishments and the prices and sale of wall paper manufactured thereby, should be placed under the control of a committee to be appointed by said several corporations and firms, each to have a voice in such appointment, in proportion to the capacity of the several factories owned by them respectively; that said committee should adopt rules and regulations governing the manner of conducting the business of all said persons, firms and corporations, the hours said factories, owned

by them, should be operated, the patterns of wall paper to be manufactured by them, the times when samples of the goods to be manufactured for the ensuing season should be submitted to a pricing committee, appointed by said committee, to enable it to classify and fix the list prices thereof; to fix and determine list prices, discounts, terms of sale, equalization of freight rates and all other matters affecting the production and regulation of prices, and the classification of the dealers in wall paper in the United States; and the prices at which wall paper should be sold to, and by such several classes; and the division of the profits, thence arising among said corporations and firms, not in proportion to their production and sales, but in proportion to their capacity; and, further, that, to secure the faithful performance by each of said persons and corporations of the provisions of said trust agreement, they should each pay a sum into a common pool, in proportion to the capacity of their respective manufactories, which said sum should be forfeited by any of said manufacturers who should break said agreement, compete with the other parties to said agreement, or sell at other or different prices than those to be fixed by said committee.

Contriving, intending and conspiring together, with intent to disguise the real agreement, and to defeat and evade the law and the provisions of the statutes of the several states, and of the United States, it was further agreed that, for the more effectual carrying out of said scheme, a corporation should be ostensibly formed under the laws of the State of New York, to be called The Continental Wall Paper Company, being the plaintiff herein, with a capital stock of two hundred thousand ($200,000.00) dollars, divided into sixteen thousand (16,000) shares of the par value of twelve ($12.50) dollars and fifty cents each, said stock to be divided among said corporations and firms in proportion to the number of rolls of paper
400 manufactured by them in the year preceding said month of July, A. D., 1896, said National Wall Paper Company taking the stock due to it and said corporations and firms which it represented and said other corporations and firms taking the stock due them respectively, all on the basis aforesaid, the same being the supposed relative value and extent of the business carried on by each of them respectively in comparison with others, and that each of said corporations and firms should pay for said stock in cash; that said The National Wall Paper Company, for itself and the members of said combination, hereinbefore alleged to be represented by it, should select three (3) so-called directors of said The Continental Wall Paper Company, and said other firms and corporations should select three (3) other, so-called directors of said company, which six (6) so-called directors should select a seventh (7th), who should decide all disputed matters; that said corporation and firms, calling itself, or themselves respectively, the Vendor, should sign a printed contract or agreement with said The Continental Wall Paper Company, calling itself the company, a copy of which contract or agreement is attached hereto marked "Exhibit 1," the said agreement being printed with blanks for the necessary signatures as well as numbers

of shares allotted, the sum to be paid therefor and the name of the so-called Vendor.

For the purposes and with the intentions aforesaid, it was further agreed that said the Continental Wall Paper Company should, in some form so as to disguise the real nature of the transaction, compel all dealers in wall paper, whether jobbers, or wholesalers, to sign an agreement obligating the jobbers or wholesalers to buy from no one but said members of said combination and trust, and at the prices fixed in schedule B, attached to said "Exhibit 1," and likewise an agreement by such jobbers, not to sell goods to dealers other than jobbers, at lower prices or upon better or more favorable terms than those shown in the schedule C, attached to said "Exhibit 1," under the penalty that, if they refused so to do, no wall paper should be sold to such jobber by any of said corporations or firms, and that, thereby, such jobbers should be driven out of business; and that, in some form or other, so as to disguise the real nature of the transaction, all wholesalers other than jobbers, should be compelled to make an agreement in writing, with said corporations or firms, not to sell such goods on terms better or more favorable than those specified in schedule C, attached to said "Exhibit 1," under penalty, that if such
401 wholesaler refused to sign and carry out said agreement, no wall paper would be sold to him by any of said corporations or firms, and he should be driven out of business, and that the profits made by such prevention of competition and enhancement of price, should be divided among said corporations and firms nominally as dividends upon said stock, but in reality, in proportion to their respective holdings as aforesaid, and that said committee of said corporation and said firms, calling themselves such directors, should regulate all the matters hereinbefore averred, prevent competition between said corporations and firms, limit production and enhance prices, and close all channels by which the consumer or retailer could obtain wall paper from the producers thereof.

In pursuance of said agreement, said plaintiff was nominally incorporated with the stock aforesaid, divided into the number of shares aforesaid, of the par value aforesaid, which were divided among the parties to said agreement aforesaid, in the manner aforesaid, and said contracts signed by said The National Wall Paper Company, and said persons and corporations, being, at once, subscription for stock by said so-called vendors, the acceptance of such subscription by said the Continental Wall Paper Company, and by it, nominally, each so-called vendor sold unto the company, and the latter agreed to purchase, the entire product of wall paper manufactured by each of said vendors for the period from July 20th, A. D., 1898, to the first day of July, A. D., 1899.

Said contract further fixed prices at which the merchandise should be nominally sold to the company, said prices being the cost of production with a slight profit added thereto, sufficient to cover incidental expenses merely. The prices at which said goods were to be nominally sold by said so-called vendors to said company, are set forth in the schedule attached to said "Exhibit 1" and marked "A."

Said agreement further nominally provided that the goods pre-

tended to be acquired by the company, from the so-called vendor, which were to be sold by jobbers, should be so sold by the company and not by the vendor, for the account of the company but that the goods acquired by the company from the so-called vendor, which should be sold to wholesalers other than jobbers, should be sold by the so-called vendor for the account of the company.

The schedule attached to said agreement contained a list of prices for all commodities in the wall paper line, which were called
402 "List" or "Road Prices," and said contract provided that sales made to jobbers should be made at discounts from said "List" or "Road Prices" fixed in the schedule marked "B," annexed to said "Exhibit 1," but that, in all cases in which the goods were manufactured at places other than the Cities of New York or Philadelphia, and sold to jobbers, the vendor should equalize the freights with either of said Cities, out of the proceeds receivable for such goods.

In reality, the agreement was, and so the business was carried on, that the manufacturers should maintain sample rooms and selling agents, and should solicit and receive the orders from all wholesalers, whether jobbers or so-called "Road" or "Quantity Buyers"; that the entire business should be done by said so-called vendors, but payments should be made by the jobbers, to the so-called company, and by the wholesalers, other than the jobbers, directly to the so-called vendors.

Said contract further provided, in order to protect said corporations and firms against competition from each other, and to insure against violation of said agreement, or any of them, that, from time to time, invoices should be supplied, at once to the customer and to the company, upon shipment and delivery of such goods, specifying quantities and road prices; that each vendor should furnish to the company, at periods stated, just, true, and sworn statements of all shipments and deliveries of merchandise made by the vendors direct to the purchasers, which statement should contain the names of the purchasers, the character of the goods sold, and the prices at which they were sold, so that the company might receive the difference between the prices at which the goods were nominally billed to said company, and at which they were sold to the purchaser, to the end that this difference, being the net profits derived from such purchase and sale, should be divided among such corporations and firms, in proportion to the capacity of their respective businesses, determined as aforesaid, without regards to the amount sold by each.

The prices at which, and the terms upon which, goods were to be sold by the vendors to all wholesalers other than jobbers, were designated "Road" or "List" prices, and were contained in the schedule marked "C," annexed to said "Exhibit 1," and forming a part thereof.

For the further purpose of carrying out said agreement, and ascertaining said net profits, and for further disguising the real
403 nature of the transaction, it was provided that the so-called vendor should receive, from sales made by it to so-called "Quantity-Buyers," the difference between the discounts allowed to those designated in the classification hereinbefore referred to as "Sec-

ond Class Jobbers" and the discounts provided in said agreement to be made to purchasers styled, in said schedules, "Quantity Buyers" in which the vendor is allowed the quantity discount, except that, where special and exclusive goods were sold, there should be an allowance of thirty (30 per cent) per cent., discount to said vendor.

Said agreement further stipulated that the prices of goods, as fixed by said schedules A and C might be altered, from time to time, but the discounts allowed to jobbers should not be altered at any time during the term of the agreement.

Said written contract further provided that the so-called vendor should make collections of accounts for goods sold to wholesalers other than the jobbers, but that the company should collect the proceeds of sales to the jobbers, and that accounts should be stated between the so-called vendors and the company at stated periods, and the account accompanied by payment, by the so-called vendor, to the so-called company, of the difference between the prices at which the goods were to be billed to the company and the prices at which the so-called vendors had agreed to charge the "Quantity Buyers."

It was further stipulated in said agreement, that monthly divisions should be made by said company of at least thirty (30 per cent.) per cent. of the "Road Prices" of goods shipped to jobbers by the company.

For the further purpose of protecting said corporations and firms and individuals from each other, preventing and stifling competition, and enforcing said combination, trust and monopoly, each of said corporations and vendors gave the company the right, and made it the duty of the company, to audit the books of account of said so-called vendors, at such times and in such manner as the company might, from time to time deem necessary or proper. It was further stipulated that this right to examine and audit the books was of the essence of the agreement, and that a failure on the part of the so-called vendor to permit the same, should operate as a breach of the contract, entitling the company to abrogate the agreement, to recover such damages as it might be able to establish, and to the forfeiture of the stock held by said vendor in such company.

It was further provided that said so-called company should
404 appoint an auditing committee from its directors, which should establish such a system of bookkeeping as it thought advisable.

Nominally to comply with the laws of the several states, but in reality, to limit production, it was further provided that none of the factories of said corporations or firms, should be operated more than ten (10) hours a day; should not be enlarged, but that the so-called vendors might substitute new machinery of the same capacity for that which might become worthless through wear, destruction by fire, or other casualty.

It was further provided that said plaintiff had the option of buying the print rollers discarded by the so-called vendors, but could not sell the same to any other manufacturer or dealer.

It was further stipulated that the power to classify the jobbers and

wholesalers, and the discounts to which they were entitled was handed over to the company and its so-called Board of Directors.

It was further required that all orders placed with the so-called vendor by jobbers be at once reported to the company.

It was further stipulated that the certificates of stock so to be subscribed for and paid for in cash by said so-called vendors, should be at once endorsed in blank and delivered to the company upon the trust and agreement that the company should hold said certificates as security for the performance by each of said corporations and persons, of all of said stipulations, and that, on breach of any one of them, the stock should be immediately sold by the company at public or private sale, without notice, upon such terms and at such prices as the company, or its officers, might deem reasonable and the proceeds of said sale be held by the company as liquidated damages for such breach.

It was further stipulated by said agreement, that the company had a right to two (2) renewals of said contract for one (1) year each; provided that, if the company elected so to do, it should so signify in writing, to the so-called vendor, before the first day of June, next preceding the renewal term, and further provided that such election to renew should be accompanied by the written consents of all the registered holders of stock of the company, including that of the so-called vendor.

At that time of the formation of said combination and trust, John Waldron and Son, and the Kaukauna Machine Company
405 were the only manufacturers in the United States of Wall Paper Manufacturing machinery in the United States, having their factories, the one in New Brunswick, New Jersey, and the other in Kaukauna, Wisconsin, and were engaged in manufacturing wall paper machinery in said states and the other states of the United States and in foreign countries.

In further carrying out said combination and trust, and with the intent and purpose herein set forth, agreements were made between said manufacturers of machinery and said plaintiff, by which, for a certain consideration, said manufacturers of machinery agreed, during the existence of plaintiff, to sell wall paper manufacturing machinery only to it and the members of said combination and not to any new mills desiring to start.

It was further a part of said agreements, though not reduced to writing, save as it set forth in said Exhibit that all jobbers and other wholesalers of wall paper should be forced to sign an agreement, binding themselves to purchase their entire stock of wall paper, nominally either from plaintiff or from said corporations or firms, at prices fixed in said "Exhibit 1," and that they should only sell at prices fixed in the schedules attached to said "Exhibit 1," under the penalty, which the combination of all of said corporations and firms enabled them to enforce, that such jobbers or wholesalers, in case of refusal to accede to the terms so imposed, or in case of violation thereof, should be unable to buy wall paper; should be driven out of business, and should sacrifice the good-will and capital therein invested.

In the further carrying out of said purpose, said plaintiff and other persons, natural or artificial, engaged in the manufacture and sale of wall paper in different states of the Union, and in trade and commerce between the several states and foreign countries, whose names and locations these defendants are unable to state, entered into contracts substantially similar to "Exhibit 1," except that, instead of such persons pledging stock in plaintiff as security for the performance, by them, of the stipulations of said contract, they gave other security, the nature of which these defendants are unable to state, and which such other persons assume obligations, and gave, to said plaintiff, rights and powers, and said plaintiff exercised, as to them, such rights and powers, as were created by said instrument, "Exhibit 1," and were exercised by plaintiff and its officers and directors in relation to the persons, natural or artificial, who were theretofore members of such combination and trust.

406 In the further carrying out of said scheme to stifle competition; to restrain commerce between the states and territories of the United States, and with foreign countries; to unduly and unreasonably enhance prices, it was further agreed between the members of said combination and trust, that the so-called directors of plaintiff, being really a committee appointed, as aforesaid, by said the members of said trust or combination should arbitrarily classify the wholesale dealers of wall paper in the U. S. and territories thereof, into two (2) classes, namely jobbers and "Road" or "Quantity Buyers"; that they should further arbitrarily classify the jobbers into "first class," and "second class" and "third class" jobbers; that they should further arbitrarily classify the other wholesalers into "road" or "quantity buyers," and "special buyers;" that, being thus classified, they should all be compelled to sign written agreements, nominally with said company, really with said members of said combination or trust, obligating them to buy their entire stock of merchandise from said company.

A copy of said agreement so to be signed by said jobbers, is attached hereto, marked "Exhibit 2" and made part hereof, the same being printed forms with blanks for names, dates and amounts of purchases.

To conceal the fact that it was an agreement to purchase from no one but said company, and the members of said combination and trust, the amount of purchases made by the buyer, in the previous year, from all the members of said combination or trust, being the entire amount of purchases made by such buyer, during the preceding year, was ascertained, and an amount at least double thereof, being an amount supposed to be, and which was in fact, more than, by any possibility, could be needed by such buyer, was inserted in said blank as the amount to be purchased by such buyer from the company.

By said agreement, the prices to be paid by the jobber were fixed according to the class in which he was arbitrarily placed, at prices enumerated in schedules B, attached to said "Exhibit 1," and the prices at which, alone, said jobber could sell, were fixed as shown by schedule C, attached to said "Exhibit 1."

Said so-called contract was originally made as of September, 1898, for one (1) year, a copy of which said agreement is attached hereto, marked "Exhibit 2" and filed herewith.

Schedules A. attached to said "Exhibit 2" is the same, so
407 far as relates to jobbers of the class with whom the agreement is made, as the corresponding provisions of schedules B, attached to said "Exhibit 1" and schedules B, attached to "Exhibit 2" is the same as schedules C, attached to "Exhibit 1." The members of said combination and trust, and said plaintiff, further to carry out said agreement, compelled all other wholesale and quantity buyers to sign agreements in the form attached to this answer, marked "Exhibit 3" and filed herewith, the same being a printed form with blanks for signatures and having attached thereto the prices shown in schedule C, attached to "Exhibit 1," which are the list prices referred to in said agreement.

All said agreements, "Exhibits 1, 2 and 3" were drawn for the purpose, and with the intent of disguising the real nature of the transaction and the real purpose, as herein set forth.

In further carrying out said combination and with said purpose and intent, agreements were made by plaintiff and the members of said combination and trust, and persons, natural and artificial, in the Dominion of Canada, by which each agreed not to compete with the other, nor cut prices, the Americans in Canada, the Canadians in the United States.

On, before and after said first day of July, A. D. 1898, this defendant had a large and profitable business of long standing, possessing a valuable good will, and in which they had a large capital invested, being what is generally called the business of a jobber or wholesaler of Wall Paper in the State of Ohio and throughout the states and territories of the United States.

The defendant and all other persons engaged in the wholesale wall paper business, at the beginning of each season, which commenced in September and closed the first of July, following, according to the custom of the trade, bought from the various persons engaged in the manufacture and sale of wall paper in the United States, being the persons, members of said combination and monopoly, their stock of wall paper to be sold by them during the ensuing year, such stock to be manufactured for them from samples submitted at the beginning of said season, in wholesale lots, and those for defendant to be shipped to Cincinnati, Ohio, and there resold by defendant, from time to time, to retail dealers throughout the state of Ohio, Kentucky, Indiana, Illinois and other states and territories of the United States.

At said time said members of said combination and trust
408 having, by the agreements and acts aforesaid, obtained the control of the wall paper trade throughout the United States, at once greatly advanced the price of said wall paper, and threatened defendant that, unless it signed said agreement, "Exhibit 2," no wall paper would be sold to it; that said combination would make it impossible for it to buy wall paper, or to continue its business, and would drive it out of its said business, and compel it to sacrifice

the good will owned by it as aforesaid, and the capital invested by it in said business.

Said combination or trust then, and from that time thereafter, until the first day of July, A. D. 1900, had the power, by means of said combination and said agreements, and the will, to carry out its said threats, and deprive these defendants or any person, firm or corporation engaged in the business of selling wall paper in the United States, of the power to obtain wall paper for its or their trade, and the will and the power to drive out of business any person, firm or corporation engaged in the business of selling wall paper; deprive them of their good will, and compel them to sacrifice the capital invested in the business.

In like manner, by the same means, all other jobbers and wholesalers of wall paper in the United States, and all persons engaged in commerce in the wall paper trade between the several States of the Union and foreign countries, were compelled to, and did sign the agreements attached to this answer, as "Exhibits 2 and 3."

The immediate, intended and direct effect of the said combination and agreements was the stifling of competition between said manufacturers and vendors of wall paper, and between the jobbers and wholesalers thereof, and to unduly enhance the price of wall paper, making it one-half more than the price which it would be had the same been left to free and unrestricted competition; to compel said jobbers and wholesalers to pay such unduly enhanced and unreasonable price to plaintiff, and to members of said combination, and to exact from others an unduly enhanced price.

After the making of said agreements, as before, the members of said combination solicited and received orders from this defendant, and all other wholesalers; filled their orders; charged the prices fixed in said schedules attached to said "Exhibit 1" and directed that payment for such merchandise should be made by the jobbers to said plaintiff combination for said several members of said combination and trust, to be divided in the manner aforesaid.

409 Said combination, contrived, intended and did prevent free and unrestricted competition between the producers and between the purchasers of wall paper, and between the jobbers and wholesalers of wall paper throughout the United States.

Defendant avers that said plaintiff, and the members of said combination as aforesaid, being more than two (2) persons, firms, corporations, partnerships and associations, combined capital and skill for each and all of the following purposes, to-wit:

1. To create restrictions in trade and commerce.
2. To carry out restrictions in trade and commerce.
3. To limit the production of wall paper.
4. To reduce the production of wall paper.
5. To increase the price of wall paper.
6. To prevent competition in the manufacturing and making of wall paper.
7. To prevent competition in the sale of wall paper.
8. To prevent competition in the purchase of wall paper.
9. To fix a standard or figure whereby its price to the public or

consumer should be controlled and established as to an article or commodity of merchandise, to-wit; Wall paper, intended for sale, use and consumption in the States of Ohio, Indiana, Kentucky and Illinois.

10. To make and enter into contracts, obligations and agreements by which they bound themselves not to sell or dispose of wall paper below a common standard figure or fixed value.

11. To carry out contracts, obligations and agreements by which they bound themselves not to sell or dispose of wall paper below a common standard figure or fixed value.

12. To make and enter into contracts, obligations and agreements, by which they agreed to keep the price of wall paper at a fixed or graduated figure.

13. To carry out contracts, obligations and agreements, by which they agreed to keep the price of wall paper at a fixed or graduated figure.

14. To make and enter into contracts, obligations and agreements, by which they established and settled the price of wall paper between themselves, and between themselves and others, so as to both directly and indirectly preclude a free and unrestricted competition among themselves, and among themselves and purchasers, and among purchasers in the sale of wall paper.

15. To carry out contracts, obligations and agreements by
410 which they established and settled the price of wall paper between themselves, and themselves and others, so as to both directly and indirectly preclude a free and unrestricted competition both between themselves, and between themselves and purchasers, and between purchasers in the sale of wall paper.

16. To make and enter into contracts, obligations and agreements by which they agreed to pool, combine, and both directly and indirectly unite the interests they had connected with the sale of wall paper so that its price might be affected.

17. To carry out contracts, obligations and agreements, by which they agreed to pool, combine and both directly and indirectly unite the interests that they had connected with the sale of wall paper so that its price might be affected.

Said contracts and agreements were each and all combinations and conspiracies in restraint of trade and commerce among the several states, and with foreign nations, and had the intent and effect of restraining trade and commerce between the several states and with foreign nations, and were an attempt, by combinations and conspiracy, between the members of said combination and trust to monopolize the trade and commerce in wall paper among the several states and with foreign nations, and, by said contracts, and the acts done by the members thereof, and by said plaintiff under and in pursuance thereof, said plaintiff and the said members of said combination or trust did monopolize and attempt to monopolize the trade and commerce in wall paper among the several states and with foreign nations.

In further carrying out of said scheme and combination, the members thereof, delivered to this defendant, in the year from Sep-

tember, A. D., 1898, to September, A. D. 1899, wall paper for which this defendant paid to said plaintiff for and per direction of the members of said combination, the sum of one hundred and forty-four thousand eight hundred and fifty-four dollars and fourteen cents ($144,854.14).

These defendants aver that the prices charged in said Exhibit attached to said amended petition, are the prices fixed and determined in pursuance of, and by the combination or trust agreement, as above set forth, and are unreasonable, unjust and excessive, and at least one-half more than they would otherwise have been. In transacting all business aforesaid, at all said times, said business was transacted under and in pursuance of said combination or trust agreement, and for the purposes, and each of them, above specified, and not otherwise.

411 The allegations in said plaintiff's petition set forth as a suit on account, are an attempt to enforce, carry out and recover upon, and by virtue of said unlawful combination, aforesaid, the prices fixed by such combination, and the prices therein sought to be recovered for said merchandise are unreasonable, excessive and above the fair market price of such merchandise by more than the amount so sought to be recovered.

Each and all of the provisions of said contract and agreement between said members of said combination and each other; between said so-called vendors and said plaintiff; between said members of said combination and said plaintiff and the so-called jobbers; between the members of said combination and trust and said plaintiff and the so-called "Road" or "Quantity Buyers," are each and all contrary to the provisions of the Statutes of the State of New York, where said plaintiff was organized; contrary to the provisions of the laws of the State of Ohio, where the merchandise was delivered; contrary to the laws of the several states where each of the members of said combinations did business; contrary to the laws of the United States; and made criminal by the laws of each of said several states and by the laws of the United States; and each and all of said agreements aforesaid are contrary to public policy, and in violation of the rights of the defendant, and injurious to the interests of the consumer and of the public.

4th Defense. For a fourth defense, and by way of first counter-claim and cross-petition, this defendant, says:

All the averments contained in the second defense of this answer are hereby made part hereof by reference to the same extent as if fully set forth herein.

Before, on and after the 20th, day of July, A. D. 1898, and from thence down to the present time, this defendant was, and is engaged in the business of selling wall paper at wholesale in the States of Ohio, Indiana, Kentucky and Illinois and throughout the United States and the territories thereof, and had, at said time, established a large and profitable business, having a valuable good-will, and had invested in said business a large capital.

By threats of refusal to sell defendants any further wall paper,

and to drive them out of their said business, which threats they had the power to enforce, by means of said combination and agreements, plaintiff and the members of said combination and trust, compelled defendant to, and it did, thereafter, buy goods nominally from plaintiff, but really from the members of said combination,
412 at an artificial price, enhanced by said combination, and arbitrarily fixed by it, and compelled this defendant to, and it did, purchase wall paper from said combination, at an artificial, arbitrary, enhanced and unreasonable price, being one-half more than what would be the price had the same been left to free and unrestricted competition, and determined by the laws of supply and demand, and compelled defendant to, and it did, pay to said combination, through plaintiff, for such merchandise, said enhanced price, being, from September A. D. 1898, to July, A. D. 1899, the sum of one hundred and forty-four thousand, eight hundred and fifty-four dollars and fourteen cents ($144,854.14), making the sum so paid, by this defendant, to the members of said combination, through said plaintiff, in excess of the fair and reasonable market price, as it would have been had the production and sale of wall paper been open to free and unrestricted competition and regulated by the laws of supply and demand, forty-eight thousand, two hundred and eighty-four dollars and seventy-one cents, ($48,284.71).

Said wall paper was purchased by these defendants of the members of said combination and trust, having their factories in the States of the United States other than Ohio, and was shipped, by such members of said trust as follows, to-wit; In the year, from September, A. D. 1898 to July, A. D. 1899, by the persons, and from the places, and in the amounts set forth in the schedule attached to the petition, to defendant in the State of Ohio, and was resold by defendant in the States of Ohio, Indiana, Kentucky and Illinois, and in other States and Territories of the United States.

All said acts and agreements of the members of said combination, and said plaintiff, were contracts and combinations and conspiracies in restraint of trade and commerce among the several states, and was a monopoly, and an attempt to monopolize, and a conspiracy between said members of said combination and trust, and with each other, and with plaintiff, to monopolize the trade and commerce in wall paper among the several states and with foreign nations, and, by the premises, defendant is damaged in its business and property, by plaintiffs, and the members of said combination and trust, in the sum of forty-eight thousand two hundred and eighty-four dollars and seventy-one cents ($48,284.71).

By reason of the premises, an action has accrued to de-
413 fendant, to recover from plaintiff, three fold said damages so by them sustained, with costs of suit, including a reasonable attorney fee; and defendant prays that the same may be allowed as a set off or counter claim, against any sum that may be found due to plaintiff, and that it may have judgment for the balance.

5th Defense. For a fifth defense, and by way of second counterclaim and cross-petition this defendant says:

All the averments contained in the second and fourth defenses are hereby made part hereof, by reference, to the same extent as if fully set forth herein.

All said sales to this defendant, made from 1898 to July, 1899, were made in the State of Ohio, and said merchandise delivered to the defendants in the State of Ohio.

Defendant avers that plaintiff and said members of said combination or trust combined capital and skill with each other for each of the following purposes:

1. To create restrictions in trade and commerce.
2. To carry out restrictions in trade and commerce.
3. To limit the production of wall paper.
4. To reduce the production of wall paper.
5. To increase the price of wall paper.
6. To prevent competition in the manufacture and making of wall paper.
7. To prevent competition in the sale of wall paper.
8. To prevent competition in the purchase of wall paper.
9. To fix a standard or figure whereby its price to the public or consumer should be controlled and establish, an article or commodity of merchandise, produce and commerce, to-wit, wall paper, intended for sale, use and consumption in the State of Ohio.
10. To make and enter into contracts, obligations and agreement by which they bound themselves not to sell or dispose of wall paper below a common standard figure and fixed value.
11. To carry out contracts, obligations and agreements, by which they bound themselves not to sell or dispose of wall paper below a common standard figure or fixed value.
12. To make and enter into contracts, obligations and agreement by which they agreed to keep the price of wall paper at a fixed or graduated figure.
13. To carry out contracts, obligations and agreements, by which they agreed to keep the price of wall paper at — fixed or graduated figure.
14. To make and enter into contracts, obligations and agreements by which they established and settled the price of wall paper
414 between themselves, and between themselves and others, so as to both directly and indirectly preclude a free and unrestricted competition among themselves, and among themselves and purchasers, and among purchasers in the sale of wall paper.
15. To carry out contracts, obligations and agreements, by which they established and settled the price of wall paper between themselves, and themselves and others, so as to both directly and indirectly preclude a free and unrestricted competition, both between themselves, and between themselves and purchasers, and between purchasers, in the sale of wall paper.
16. To make and enter into contracts, obligations and agreements, by which they agreed to pool, combine and both directly and indi-

rectly unite the interests they had connected with the sale of wall paper, so that its price might be affected.

17. To carry out contracts, obligations and agreements, by which they agreed to pool, combine and both directly and indirectly unite the interests that they had connected with the sale of wall paper, so that its price might be affected.

By the premises, this defendant has been injured by plaintiff, and the members of said combination, in their business and property in the sum of $48,284.71.

By the premises, an action has accrued to defendant in favor of defendant, and against plaintiff, and the members of said combination, to recover the sum of Ninety-six Thousand Five Hundred and Sixty-nine Dollars and forty-two cents ($96,569.42) and the cost of the suit.

6th Defense. For a sixth defense, and by way of Third Counterclaim and cross-petition; this defendant says:

All the averments contained in the Second defense of this answer are made part hereof by reference, to the same extent as if fully set forth herein.

Defendant further avers that plaintiff, and the members of said combination undertook, and promised defendant to sell to it wall paper at as low a price as plaintiff, or the members of said combination or any of them, sold to any other persons, and defendant, under said agreement, and relying thereon, and believing that plaintiffs and the members of said combination had carried out that agreement, and sold to defendant at prices as low as they had sold to any one else, received, from plaintiff, and the members of said combination, merchandise, to-wit, wall paper, and paid it and the members of said combination, through plaintiff, the sum of One Hundred and forty-four thousand, Eight hundred and fifty-four Dollars
415 and fourteen cents ($144,854.14), yet plaintiff and the members of said combination disregarding their undertakings and their duty in the premises, did not, and would not, sell to these defendants, wall paper, at the same prices at which they sold to other persons, but secretly and fraudulently and without the knowledge of defendant, sold to other persons at a much lower price than that at which they sold to this defendant.

By the premises, this defendant was damaged by plaintiff in the sum of $41,000, which defendant prays may — set off and counterclaimed against any amount found due to plaintiff by reasons of the premises, and that it may have judgment against plaintiff for the remainder.

Defendant therefore prays judgment against said plaintiff, for the sum of Two Hundred and Eighty-two Thousand, Four Hundred and Twenty-three Dollars and fifty-five cents, ($282,423.55), and reasonable attorney fees and costs.

COBB & HOWARD,
HARLAN CLEVELAND,
Att'ys for Defendant.

UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, Hamilton County, ss:

William L. Voight, being first duly sworn says that he is the Treasurer of the Lewis Voight & Sons, defendant herein, and that the facts stated in and the allegations of the foregoing amended answer are true as he verily believes.

WM. L. VOIGHT.

Sworn to before me and subscribed in my presence this 23rd day of October, A. D. 1902.

[SEAL.] GEORGE L. WILLIAMS,
Notary Public in and for Hamilton Co., O.

40 cents paid by defendants.

Interrogatories to be Answered by Plaintiff.

1. Was not the capital stock of the plaintiff subscribed for, and issued to the persons mentioned in the Second Defense, or their representatives?

416 2. If you answer "Yes" in part, and "No" in part, or, if you answer "No," then state by whom said stock was subscribed for; to whom it was issued; and who they represented?

3. Upon what basis was the amount of stock allot-ed to each subscriber determined?

4. Was not all said stock issued to persons, firms or corporations engaged in the manufacture and sale of wall paper or to their representatives or nominees? If not all, how much, and to whom was it issued, and in what quantities?

5. Was not the stock of plaintiff allot-ed to the various subscribers in quantities based upon the supposed capacity to produce, or value of the business?

6. If you answer "Yes," state which?

7. Was not the scheme of the incorporation of plaintiff, and the contracts thereafter made, between the manufacturers or so-called vendors, and the plaintiff, and the manner of conducting the business of plaintiff, and of said so-called vendors, after the formation of plaintiff, agreed upon before the formation of plaintiff? Answer each part of this interrogatory.

8. Was not the plaintiff incorporated for the purpose of carrying out the plans evidenced by the instruments attached to the answer herein?

9. What is the date of the incorporation of plaintiff?

10. Did not plaintiff, and manufacturers of wall paper, after its formation, sign, execute and deliver instruments in the form of "Exhibit 1" attached to this answer and cross-petition?

11. If you answer "No" to the last interrogatory, give the form in which such instruments were made?

12. With whom were such instruments made, and what was the amount of stock stipulated by each instrument should be taken by the other party to the agreement?

13. What was the date of each of said instruments?

14. When and by whom was the form of said instruments prepared?

15. Were not such instruments in print at the time the plaintiff was incorporated?

16. Was not the option of renewal mentioned in the first instrument, taken advantage of by plaintiff?

17. Were not instruments in the form, or substantially the form, of "Exhibit 2" attached to this answer and cross-petition, made in 1898 by the plaintiff and persons designated therein as jobbers?

18. If you answer "No" to the last interrogatory give the
417 form of the agreement which was made in the first year between the plaintiff and the persons you have designated as jobbers?

19. Give the dates at which such agreements were made in the first year; the persons natural, or artificial; and the residences, or places of business of the persons with whom made; and the amount up to which each of said persons agreed to purchase from plaintiff?

20. Was not the amount named in instruments signed by jobbers during the first and second years of the existence of plaintiff, as the amount to be purchased by such jobbers, based upon the purchases by such jobbers during the preceding year, and placed at a figure which was thought would exceed any possible purchases by such jobber?

21. If you answer "No" to the last interrogatory, state how the amount to be purchased by such jobber or party was arrived at?

22. Were not instruments signed with other wholesalers and jobbers in the form, or substantially in the form of "Exhibit 3," attached to this answer and cross-petition during the first year of the existence of plaintiff?

23. If You answer "No," give the form of such contracts with wholesalers other than jobbers executed in the first year, and also that with "Special Quantity Buyers"?

24. Give the names and residences and places of business of such wholesalers other than jobbers by whom such instruments were signed during the first year of plaintiff's existence, and the amounts each were to buy, and the class in which they were placed?

25. Were not "Special Quantity Buyers" other than jobbers classified on the basis of their purchases during the previous year?

26. Did not plaintiff, through its officers and so-called Board of Directors, control the business of the persons alleged in said answer and cross-petition in the way and in the particulars alleged in said answer and cross-petition?

27. If you answer "No" to the last interrogatory, state in what particulars of those mentioned in the answer and cross-petition, they did control the business of said persons, natural and artificial, named in said answer as members of said combination, and, if they con-

trolled in any additional particulars, state fully such additional particulars?

28. Did not the plaintiff audit the books of the manufacturers with whom they had said contracts and receive the statements and invoices and affidavits mentioned in "Exhibit 1," attached
418 to this answer and cross-petition?

29. If you answer "No" to the last interrogatory, state of which persons, natural or artificial, plaintiff did audit the books, and from what persons, natural or artificial, they did exact and receive the statements, invoices and affidavits set forth in said "Exhibit 1"?

30. Did not the plaintiff make contracts similar to "Exhibit 1" with persons other than the persons mentioned in said answer and cross-petition, as members of the combination, upon the same lines as "Exhibit 1"?

31. If you answer "Yes," set forth the names of such persons, natural and artificial; the dates of the making of the contracts and the forms of the contracts?

32. What proportion of the wall paper produced in the United States was produced by persons, natural or artificial, with whom plaintiff had contracts similar unto those set forth as "Exhibit 1"?

33. What proportion of the wall paper trade of the United States was carried on by persons who signed instruments similar to those set forth as "Exhibits 2 and 3" attached to this answer and cross-petition?

34. Did not the price of wall paper in the United States and in the States of Ohio, Indiana, Kentucky and Illinois, rise, immediately after the formation of plaintiff, and the making, by it, with manufacturers of wall paper, of agreements similar to "Exhibit 1" attached to this answer and cross-petition, and the signing of instruments, by purchasers of wall paper, similar to, and substantially the same as "Exhibits 2 and 3" attached to this answer and cross-petition?

35. If you answer "Yes" tell how much it advanced in price?

36. Did not the price of wall paper in the United States and the State of Ohio and Illinois, fall about the time of the expiration of the agreements which succeeded them in 1899?

37. Were not sales made to Alfred Peats and Company at prices less than those fixed by schedules B, attached to "Exhibit 1" and schedules A, attached to "Exhibit 2" at the price at which sales would be made to "First class jobbers"?

38. If you answer "Yes" tell how much lower and the quantity so sold?

39. Were not sales made to other persons, natural or artificial, at lower prices, or on more favorable terms than those fixed by schedules B, attached to "Exhibit 1" and schedules A, attached to "Exhibit 2" as the prices and terms at which sales would be made to
419 jobbers of the class in which such persons were classified by you? If so, give names, prices and terms.

40. Were not sales made to persons, natural or artificial, at lower prices or on more favorable terms than those fixed by schedules C,

attached to "Exhibit 1" and schedules "B" attached to "Exhibit 2" as the road or list prices and terms to persons other than jobbers? If so, give names, prices and terms.

41. Were agreements made with John Waldron and Son and the Kankanna Machine Company? If so, when, and what were the terms of each?

42. Were not said John Waldron and Son and the Kankanna Machine Company the only manufacturers of wall paper machinery in the United States at the time the agreements were made with them?

If you answer "No," state what other manufacturers of such machinery there then were in the United States.

43. Did you not have agreements or understandings with manufacturers and wholesalers in Canada as to competition between manufacturers and dealers in the United States, and Canadians; in the wall paper business?

44. If you had such agreements or understandings, state the terms, if in writing, give copies. State with whom such agreements or understandings were made, and when.

"EXHIBIT 1."

This agreement, made this — day of ——, in the year one thousand eight hundred and ninety-eight, by and between —— ——, a corporation organized under the laws of the State of —— (hereinafter called the Vendor) party of the first part, and the Continental Wall Paper Company, a corporation organized under the laws of the State of New York, (hereinafter called the Company), party of the second part,

Whereas, the Vendor is engaged in the manufacture and sale of wall paper, borders and other articles usually produced and handled in connection therewith, and the Company is desirous of acting as its selling agent in handling the entire product of the Vendor; and,

Whereas, the Company has an authorized capital of two hundred thousand dollars, divided into 16,000 shares, of the par value of $12.50 each; and

420 Whereas, the dealer is desirous of acquiring — shares of the stock of said company at par, and to that end has offered to enter into this agreement and to secure the performance thereof by the deposit of said shares.

Now, therefore, in consideration of the foregoing recitals, and for other good and valuable consideration, It is agreed, between the parties hereto, as follows:

First. The Vendor hereby sells unto the company, and the latter agrees to purchase, the entire product of wall paper that may be manufactured by the Vendor for the period from July 20th, 1898, to the first day of July, 1899.

The prices at which the merchandise shall be sold to the company are set forth in a schedule hereto annexed, marked "A," and hereby made a part of this agreement.

The Vendor further grants unto the company the right to two renewals of said contract of one year each, provided that in the event of the election of the company to avail itself of either of said renewals, it shall so signify in writing to the Vendor before the first day of June next preceding the renewal term, and provided further that such election to renew shall be accompanied by the written consents of all the registered stockholders of the company, including that of the Vendor.

Second. The goods acquired by the company from the Vendor hereunder, which are to be sold to jobbers, shall be so sold by the company and not by the Vendor for the account of the company. Such sale shall be made by the company at discounts from road prices fixed in the schedule hereto annexed, marked "B," which is hereby made part of this agreement. The Vendor will deliver such goods upon the direction of the company at the risk and for the account of the latter f. o. b. at the place of manufacture, provided, however, that in all cases in which the goods are manufactured at places other than the Cities of New York or Philadelphia the Vendor will equalize the freights with either of said cities out of the proceeds receivable for such goods. Memorandum invoices shall be supplied to the customer and to the company immediately upon the shipment and delivery of such goods, said invoices specifying quantities and road prices.

Third. There shall be furnished by the Vendor to the company on the 7th, 14th, 21st, and last days of each month (except when those days fall on Sundays, and then on the next succeeding day) a just and true statement of all shipments and deliveries of merchandise included in this contract which the Vendor may make
421. for the account of the company, which statement shall contain the names of the purchasers, the character of the goods sold and the prices at which they were sold, to the end that the company may make the proper charges, and in order to entitle the Vendor to be credited with the agreed cost price for such goods.

Each of such statements of shipments shall be accompanied by an affidavit of one of the officers of the Vendor and of one of its bookkeepers, and of one of its shipping clerks, to the effect that the information therein contained is true.

Fourth. The company shall permit the Vendor to sell in its own name, and the latter hereby agrees to sell for the account of the company such of the goods manufactured by the Vendor as are to be disposed of to purchasers not classified as jobbers, which sales shall be made at the cost and expense of the Vendor, said Vendor hereby guaranteeing all credits and the collection of all accounts connected with such sales. The prices at which and the terms upon which, such goods are to be sold are designated in this agreement as the "Road prices," and are contained in a schedule hereto annexed marked "C," which is hereby made a part of this agreement.

On the 7th, 14th, 21st and last days of each month (except when those days fall on Sundays, and then on the next succeeding days) the Vendor will furnish to the Company a statement showing all the shipments made on account of such sales, which statements shall

contain the names of the purchasers, the character of the goods and the prices at which they were sold and such sales shall be credited to the Vendor by the company at the prices fixed in schedule "A," and shall be charged against said Vendor at the prices at which they were sold, which shall in no event be less than those designated in schedule "C."

The Vendor is to receive for its services and expenses connected with such sales and allowances discounts equal to those who are designated in a classification made by the parties hereto as "second class jobbers," less the discounts made on sales to purchasers designated in the accompanying schedules as "quantative purchasers" on which the Vendor has allowed the quantative discount, except that where special and exclusive goods are sold there shall be an allowance of 30 per cent. discount to the vendor.

The prices of goods as fixed by schedules "A" and "C" may be altered from time to time, but the discounts allowed to jobbers shall not be altered at any time during the term of this agreement.

422 Fifth. The Vendor will make collection of all accounts for goods sold by it for the account of the company under the provisions of this agreement, except for sales to jobbers (which accounts the company is to collect), and will, on the 10th day of each and every month during the term of this agreement, account to the company. Such account shall be accompanied by a payment by the Vendor to the company of the difference between the prices at which the goods are agreed to be sold to the company as embodied in schedule "A," and the prices at which the Vendor has agreed to dispose of said goods as contained in schedule "C."

The purchases made by the company from the Vendor hereunder shall be upon the same credit and terms as those accorded to other dealers, but the company shall have the right to anticipate the due date of all such purchases, and will pay, on the 10th day of each month, to the Vendor a sum on account of all shipments of the preceding month equal to not less than 30 per cent. of the road prices of goods shipped to jobbers by the company.

Sixth. The Vendor hereby grants unto the company the right, and it shall be the duty of the latter, through its officers selected for that purpose, to audit the books of account of the Vendor as to production, sales and shipments at such times and in such manner as the company may, from time to time, deem necessary or proper. This provision is of the essence of the agreement, and a failure on the part of the Vendor to faithfully perform the same shall operate as a breach of the contract entitling the company to abrogate the agreement and to such damages as it may be able to establish in addition to the absolute transfer and surrender to it of the stock to be pledged as hereinafter provided.

Seventh. There shall be a committee selected from the company to be known as the auditing committee, which shall be made up from among the directors. Said committee shall have power to establish such a system of bookkeeping as in its judgment may be advisable.

In order to conform as nearly as may be to the laws of the various

states in which the factories of the vendor are located, it is understood that the vendor shall not be at liberty to require from the company the acceptance of the product of more than ten hours per day of any one of said factories.

The product intended to be sold to the company hereunder, and which the latter undertakes to acquire, does not contemplate
423 the enlargement of the manufacturing facilities of the vendor, but nothing herein contained shall be construed as affecting the right of the vendor to substitute new machinery of the same capacity for any now in use which may become useless through wear or through destruction by fire or other casualty.

The power to designate the parties who are to be classed as jobbers and the discounts to which they are entitled is expressly reserved by the company, and such designation is to be made through its board of directors, but the vendor shall have the right to select the jobbers through whom the goods manufactured by it are to be distributed, and to designate the amount of its goods such jobbers may buy, subject to such credit limitations as the board of directors may impose.

All orders placed with the vendor by jobbers on behalf of the company must be at once reported to the latter.

Eighth. The company hereby agrees to sell and the vendor agrees to purchase — shares of the common stock of the company, for which stock the vendor agrees to pay the sum of —— in cash as soon after the execution and delivery of this agreement as the same may be demanded by the company, but only if and when the entire share capital of the company shall have been fully subscribed at not less than par.

The vendor will, after paying for said shares of stock, endorse the certificates representing the same, and deliver the certificates so endorsed in blank to the company, upon the trust and agreement that the company shall hold said certificates as security for the performance by the vendor of each and all of the covenants and conditions of this agreement, and upon the refusal, neglect or omission of the vendor, its successors or assigns, to perform this agreement, or any part thereof, the said shares of stock and the certificates represented thereby shall be immediately sold by the company at public or private sale, without notice, upon such terms and at such price as the company or its officers may deem reasonable, and that the proceeds of sale be paid into the treasury of the company as the agreed and liquidated damages to the company for the breach of said agreement.

The parties hereto have fixed upon the said stock, and the proceeds thereof as liquidated damages, because of the difficulty in establishing, in a courts of law, the actual damage that would be suffered by the company in the event of the refusal, neglect or omission to perform this agreement, and in order to avoid the difficulty of such proof.

424 In witness whereof the vendor and the company have respectively caused this agreement to be executed by their respective Presidents, and their respective corporate seals to be hereto attached pursuant to resolutions of their respective boards of directors, the day and year first above written.

Schedule "A."

Referred to in the Foregoing Agreement and Forming Part Thereof.

	Cents.		Cents.	
Browns, listed at	4	at	2	
Borders (2 bd. only), listed at	15	at	6	
Whites, listed at	4	1-2 at	2	1-2
2 B Border, listed at	15	at	6	
2 B Bld. Border, listed at	20	at	8	
1 B Col. Border, listed at	20	at	6	
1 B Bld. Border, listed at	25	at	8	
Whites, listed at	5	at	2	3-4
Whites, listed at	5	1-2 at	3	
2 B Border, listed at	15	at	6	
2 B Bld. Border, listed at	20	at	8	
1 B Col. Border, listed at	20	at	6	
1 B Bld. Border, listed at	25	at	8	
Whites, listed at	6	1-2 at	3	1-2
2 B Col. Border, listed at	20	at	7	
2 B Bld. Border, listed at	25	at	9	
1 B Col. Border, listed at	25	at	7	
1 B Bld. Border, listed at	30	at	9	
9 oz. Dark Whites &				
12 oz. Glimmers, listed at	7	1-2 at	4	
2 B Col. Border, listed at	20	at	8	
2 B Bld. Border, listed at	25	at	10	
1 B Col. Border, listed at	25	at	8	
1 B Bld. Border, listed at	30	at	10	
12 oz. Glimmers, listed at	9	at	4	1-2
2 B Col. Border, listed at	20	at	8	
2 B Bld. Border, listed at	25	at	10	
1 B Col. Border, listed at	25	at	8	
1 B Bld. Border, listed at	30	at	10	
12 oz. Glimmers, listed at	10	at	4	3-4
2 B Col. Border, listed at	20	at	8	
2 B Bld. Border, listed at	25	at	10	
425				
1 B Col. Border, listed at	25	at	8	
1 B Bld. Border, listed at	30	at	10	
10 oz. Bronzes, listed at	7	at	3	1-2
2 B Border, listed at	20	at	7	
2 B Bld. Border, listed at	25	at	10	
1 B Border, listed at	25	at	7	
1 B Bld. Border, listed at	30	at	10	
10 oz. Bronzes, listed at	8	at	4	
2 B Border, listed at	25	at	7	
2 B Bld. Border, listed at	30	at	10	
1 B Border, listed at	30	at	7	

1 B Bld. Border, listed at	35	at 10
10 oz. Bronzes, listed at	9	at 4 1-2
2 B Border, listed at	25	at 7
2 B Bld. Border, listed at	30	at 10
1 B Border, listed at	30	at 7
1 B Bld. Border, listed at	35	at 10
12 oz. Bronzes listed at	10	at 4 3-4
2 B Border, listed at	30	at 10
2 B Bld. Border, listed at	35	at 12 1-2
1 B Border, listed at	35	at 10
1 B Bld. Border, listed at	40	at 12 1-2
Embossed Borders,	5 extra at	2 1-2 Ext.
12 oz. Bronzes, listed at	11	at 5
2 B Border, listed at	30	at 10
2 B Bld. Border, listed at	35	at 12 1-2
1 B Border, listed at	35	at 10
1 B Bld. Border, listed at	40	at 12 1-2
12 oz. Bronzes, listed at	12 1-2	at 5 1-2
2 B Border, listed at	30	at 12
2 B Bld. Border, listed at	35	at 15
1 B Border, listed at	40	at 12
1 B Bld. Border, listed at	45	at 15
Embossed Borders,	5 extra at	2 1-2 Ext.
12 oz. Bronzes, listed at	13 1-2	at 6 1-2
2 B Border, listed at	30	at 12
2 B Bld. Border, listed at	35	at 15
1 B Border, listed at	40	at 12
1 B Bld. Border, listed at	45	at 15
Embossed Borders,	5 extra at	2 1-2 Ext.
12 oz. Bronzes, listed at	15	at 6 1-2
2 B Border, listed at	35	at 15
2 B Bld. Border, listed at	40	at 18
1 B Border, listed at	45	at 15
1 B Bld. Border, listed at	50	at 18
Embossed Borders,	5 extra at	2 1-2 Ext.
12 oz. Bronzes, listed at	18	at 7

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2 B Border, listed at	35	at 15
2 B Bld. Border, listed at	40	at 18
1 B Border, listed at	45	at 15
1 B Bld. Border, listed at	50	at 18
Embossed Bronzes, listed at	11	at 5
2 B Border, listed at	30	at 10
2 B Bld. Border, listed at	35	at 12 1-2
1 B Border, listed at	35	at 10
1 B Bld. Border, listed at	40	at 12 1-2
Embossed Bronzes, listed at	21 1-2	at 5 1-2
2 B Border, listed at	35	at 15
2 B Bld. Border, listed at	40	at 17 1-2
1 B Border, listed at	45	at 15

1 B Bld. Border, listed at	50	at	17 1-2
Embossed Bronzes, listed at	13 1-2	at	6
2 B Border, listed at	35	at	15
2 B Bld. Border, listed at	40	at	17 1-2
1 B Border, listed at	45	at	15
1 B Bld. Border, listed at	50	at	17 1-2
Embossed Bronzes, listed at	15	at	6 1-2
2 B Border, listed at	40	at	15
2 B Bld. Border, listed at	45	at	18
1 B Border, listed at	50	at	15
1 B Bld. Border, listed at	55	at	18
Embossed Bronzes, listed at	18	at	7.20
2 B Border, listed at	40	at	15
2 B Bld. Border, listed at	45	at	18
1 B Border, listed at	50	at	15
1 B Bld. Border, listed at	55	at	18
Plain Ingrains, ordinary shades, listed at	12 1-2	at	7 3-4
Varnish Tiles, 20″, listed at	20	at	12
Varnish Tiles, 22″, listed at	25	at	15

On goods in regular lines not classified and not designated as special or exclusive, the cost price allowed to Manufacturers shall be road price less first class jobber's discount and 15 per cent. for assumed profit.

Special and exclusive goods, cost allowed to manufacturers 50 per cent. of road price.

SCHEDULE "B."

Referred to in the Foregoing Agreement and Forming Part Thereof.

Selling Prices to Jobbers.

Discounts on Hangings.

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	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
Browns,	4	20	17 1-2	15
Borders (2 bd. only)	15			
Whites,	4 1-2	22 1-2	20	17 1-2
B Bd. Bor.	15			
2 Bd. Bld. Bor.	20			
1 Bd. Col. Bor.	20			
1 Bd. Bld. Bor.	25			
Whites,	5	25	22 1-2	20
	5 1-2			
2 Bd. Bor.	15			
2 Bd. Bld. Bor.	20			
1 Bd. Col. Bor.	20			
1 Bd. Bld. Bor.	25			

Whites,	6 1-2	27 1-2	25	20
2 Bd. Col. Bor.	20			
2 Bd. Bld. Bor.	25			
1 Bd. Col. Bor.	25			
1 Bd. Bld. Bor.	30			
9 oz.				
10 oz. Glimmer.	7 1-2	30	25	20
2 Bd. Col. Bor.	20			
2 Bd. Bld. Bor.	25			
1 Bd. Col. Bor.	25			
1 Bd. Bld. Bor.	30			
12 oz. Glimmer.	9	32 1-2	27 1-2	22 1-2
2 Bd. Col. Bor.	20			
2 Bd. Bld. Bor.	25			
1 Bd. Col. Bor.	25			
1 Bd. Bld. Bor.	30			
12 oz. Glimmer.	10	32 1-2	27 1-2	22 1-2
2 Bd. Col. Bor.	20			
2 Bd. Bld. Bor.	25			
1 Bd. Col. Bor.	25			
1 Bd. Bld. Bor.	30			
10 oz. Bronzes,	7	30	25	20
2 Bd. Bor.	20			
2 Bd. Bld. Bor.	25			
1 Bd. Bor.	25			
1 Bd. Bld. Bor.	30			
10 oz. Bronzes,	8	32 1-2	27 1-2	22 1-2
2 Bd. Bor.	25			
2 Bd. Bld. Bor.	30			
1 Bd. Bor.	30			
1 Bd. Bld. Bor.	35			

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	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
10 oz. Bronzes,	9	35	30	25
2 Bd. Bor.	25			
2 Bd. Bld. Bor.	30			
1 Bd. Bor.	30			
1 Bd. Bld. Bor.	35			
Embossed	11	37 1-2	32 1-2	27 1-2
2 Bd. Bor.	30			
2 Bd. Bld. Bor.	35			
1 Bd. Bor.	35			
1 Bd. Bld. Bor.	40			
Plain 12 oz. brz.	10	37 1-2	32 1-2	25
2 Bd. Bor.	30			
2 Bd. Bld. Bor.	35			
1 Bd. Bor.	35			
1 Bd. Bld. Bor.	40			
Emb. Borders,	5 extra			
12 oz. Bronzes,	11	37 1-2	32 1-2	25

2 Bd. Bor.	30				
2 Bd. Bld. Bor.	35				
1 Bd. Bor.	35				
1 Bd. Bld. Bor.	40				
12 oz. Bronzes,	12	1-2	40	35	27 1-2
2 Bd. Bor.	30				
2 Bd. Bld. Bor.	35				
1 Bd. Bor.	40				
1 Bd. Bld. Bor.	40				
Emb. Borders,	5	extra			
Embossed Bronzes,	12	1-2	40	35	27 1-2
2 Bd. Bor.	35				
2 Bd. Bld. Bor.	40				
1 Bd. Bor.	45				
1 Bd. Bld. Bor.	50				
Embossed Bronzes,	13	1-2	40	35	27 1-2
2 Bd. Bor.	35				
2 Bd. Bld. Bor.	40				
1 Bd. Bor.	45				
1 Bd. Bld. Bor.	50				
12 oz. Bronzes,	15		45	40	30
2 Bd. Bor.	35				
2 Bd. Bld. Bor.	40				
1 Bd. Bor.	45				
1 Bd. Bld. Bor.	50				
Emb. Borders,	5	extra			
12 oz. Pl. Brz.	13	1-2	40	35	27 1-2
429					
2 Bd. Bor.	30				
2 Bd. Bld. Bor.	35				
1 Bd. Bor.	40				
1 Bd. Bld. Bor.	45				
Emb. Borders,	5	extra			
Pl. Brz. 12 oz.	18		45	40	30
2 Bd. Bor.	35				
2 Bd. Bld. Bor.	40				
1 Bd. Bor.	45				
1 Bd. Bld. Bor.	50				
Embossed Bronzes,	15		45	40	30
2 Bd. Bor.	40				
2 Bd. Bld. Bor.	45				
1 Bd. Bor.	50				
1 Bd. Bld. Bor.	55				

	Price. Cents.	1st job. Per cent.	2nd job. Per cent.	3rd job. Per cent.
Emb. Bronzes,	18	45	40	30
2 Bd. Bor.	40			
2 Bd. Bld. Bor.	45			
1 Bd. Bor.	50			
1 Bd. Bld. Bor.	55			
Plain ingrains,	12 1-2	30	25	20
Varnish tiles, 20 in.	20	30	25	20
Var. Tiles, 22 in.	22	30	25	20
Special Goods,		30	25	20
Exclusive Goods,		20	20	20

Exclusive Goods handled by the jobber in his retail business only.

On goods made by the Vendor, there shall be deducted from the net result, after deducting the above discounts, a deduction of 5 per cent., excepting on Plain Ingrains, Varnish Tiles, Special Goods and Exclusive Goods.

Terms of Sales.

Four (4) Months' Note, approved credit; or discounts at the rate of one per cent. per month for anticipated payments. Goods shipped on and after October 15th, on account of Spring purchases, may be dated March 1st, four (4) months.

Equalization of Freights.

Freights on goods sold to jobbers to be equalized with New York and Philadelphia.

430 *Schedule of Discounts to Jobbers.*

On borders in regular lines, not including Exclusive goods.

First grade. Cents.	Per cent.	Second grade. Per cent.	Third grade. Per cent.
15	35	30	25
18	40	35	30
20	40	35	30
22	40	35	30
25	40	35	30
30	40	35	30
35	40	35	30
40	45	40	35
45	45	40	35
50	45	40	35
60	50	45	40

Schedule C.

Referred to in the Foregoing Agreement, and Forming Part Thereof.

Selling Prices to Other Than Jobbers.

	Cents.
Browns,	4
Borders (2 bd. only),	15
Whites,	4 1-2
2 Bd. Bor.	15
2 Bd. Bld. Bor.	20
1 Bd. Col. Bor.	20
1 Bd. Bld. Bor.	25
Whites,	5 and 5 1-2
2 Bd. Bor.	15
2 Bd. Bld. Bor.	20
1 Bd. Col. Bor.	20
1 Bd. Bld. Bor.	25
Whites,	6 1-2
2 Bd. Col. Bdr.	20
2 Bd. Bld. Bor.	25
1 Bd. Col. Bor.	25
1 Bd. Bld. Bor.	30
9 oz. Dark Whites & 12 oz. Glimmers,	7 1-2
2 Bd. Col. Bor.	20
2 Bd. Bld. Bor.	25
1 Bd. Col. Bor.	25
431	
1 Bd. Bld. Bor.	30
12 oz. Glimmers	9
2 Bd. Col. Bor.	20
2 Bd. Bld. Bor.	25
1 Bd. Col. Bor.	25
1 Bd. Bld. Bor.	30
12 oz. Glimmers,	10
2 Bd. Col. Bor.	20
2 Bd. Col. Bor.	25
1 Bd. Col. Bor.	25
1 Bd. Bld. Bor.	30
10 oz. Bronzes,	7
2 Bd. Bor.	20
2 Bd. Bld. Bor.	25
1 Bd. Bor.	25
1 Bd. Bld. Bor.	30
10 oz. Bronzes,	8
2 Bd. Bor.	25
2 Bd. Bld. Bor.	30
1 Bd. Bor.	30

1 Bd. Bld. Bor.	35
10 oz. Bronzes,	9
2 Bd. Bor.	25
2 Bd. Bld. Bor.	30
1 Bd. Bor.	30
1 Bd. Bld. Bor.	35
Embossed,	11
2 Bd. Bor.	30
2 Bd. Bld. Bor.	35
1 Bd. Bor.	35
1 Bd. Bld. Bor.	40
Pl. 12 oz. Bronzes,	10
2 Bd. Bor.	30
2 Bd. Bld. Bor.	35
1 Bd. Bor.	35
1 Bd. Bld. Bor.	40
Embossed Borders,	5 extra
12 oz. Bronzes,	11
2 Bd. Bor.	30
2 Bd. Bld. Bor.	35
1 Bd. Bor.	35
1 Bd. Bld. Bor.	40
12 oz. Bronzes,	12 1-2
2 Bd. Bor.	30
2 Bd. Bld. Bor.	35
1 Bd. Bor.	40
1 Bd. Bld. Bor.	40

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Embossed Borders,	5 extra
Embossed Bronzes,	12 1-2
2 Bd. Bor.	35
2 Bd. Bld. Bor.	40
1 Bd. Bor.	45
1 Bd. Bld. Bor.	50
Embossed Bronzes,	13 1-2
2 Bd. Bor.	35
2 Bd. Bld. Bor.	40
1 Bd. Bor.	45
1 Bd. Bld. Bor.	50
12 oz. Bronzes,	15
2 Bd. Bor.	35
2 Bd. Bld. Bor.	40
1 Bd. Bor.	45
1 Bd. Bld. Bor.	50
Embossed Borders,	5 extra
12 oz. Pl. Bronzes,	13 1-2
2 Bd. Bor.	30
2 Bd. Bld. Bor.	35
1 Bd. Bor.	40
1 Bd. Bld. Bor.	45

Embossed Borders,	5	extra
12 oz. Pl. Bronzes,	18	
2 Bd. Bor.	35	
2 Bd. Bld. Bor.	40	
1 Bd. Bor.	45	
1 Bd. Bld. Bor.	50	
Embossed Bronzes,	15	
2 Bd. Bor.	40	
2 Bd. Bld. Bor.	45	
1 Bd. Bor.	50	
1 Bd. Bld. Bor.	55	
Embossed Bronzes,	18	
2 Bd. Bor.	40	
2 Bd. Bld. Bor.	45	
1 Bd. Bor.	50	
1 Bd. Bld. Bor.	55	
Plain Ingrains,	12	1-2
Varnish Tiles, 20 in.	20	
Varnish Tiles, 22 in.	25	

Ingrain Borders according to value and selling quality.

Special goods according to value and selling quality.

Exclusive goods according to value and selling qualities, and will comprise goods not handled by the jobbers, excepting in his retail business.

433 On goods made by the Vendor there shall be deducted a discount of 5 per cent. This discount, in the case of quantity lots shall be deducted from the net amount arrived at after deducting the quantity discount.

Terms of Sale.

Four (4) months' note, approved credit; or discount at the rate of one per cent. per month for anticipated payment. Goods shipped on and after October 15th, on account of Spring purchase, may be dated March 1st, four (4) months.

Equalization of Freights.

Freights on goods sold to regular dealers to be equalized with: New York, Philadelphia, Baltimore, Pittsburg, Buffalo, Troy, Albany, Portland, Me., Rochester, Scranton, Cleveland, Toledo, Cincinnati, Chicago, St. Louis, Boston and Detroit.

Quantity Purchasers.

When goods are purchased in the following quantities they will be subjected to the following discounts.

Up to 5½c. inclusive, 600 rolls, 5 per cent.; 1200 rolls, 10 per cent.

6c. to 9c. inclusive 300 rolls, 7½ per cent.; 600 rolls, 12½ per cent.

10c. to 15c. inclusive, 200 rolls, 10 per cent.; 400 rolls, 15 per cent.

16c. and up, 10 per cent.; 200 rolls, 15 per cent.

Discounts on borders and ceiling papers follow the discounts on hangings they match.

Plain Ingrains, Varnish Tiles, 200 rolls or more, 10 per cent.

Ingrain Borders, 26 rolls of a kind, 10 per cent.

Ingrain Borders, 50 rolls or over, 15 per cent.

Exhibit 2.

An agreement made this — day of —— in the year one thousand eight hundred and ninety eight, between the Continental Wall Paper Company, a corporation organized under the laws of the State of New York, (hereinafter called the company), party of the first part and —— —— of —— (Hereinafter called the jobber) party of the second part.

In consideration of the sum of one dollar, paid by the jobber unto the company for granting of this agreement, the receipt whereof is hereby acknowledged, and other valuable considerations.

434 It is agreed, between the parties hereto as follows:

First: That the company will sell, subject to such credit limitation as it may impose, and the jobber will purchase the entire requirements of the jobber in his business of selling wall paper for the business year ending July 1st, 1899, to the amount of a gross value, without discounts, of —— the jobber reserving to himself the right to purchase such merchandise as he may need in excess of —— from others.

The company is to deliver the goods without additional charge f. o. b. at New York or Philadelphia, or to equalize freights from the places at which it makes deliveries to either of said cities.

Second. The jobber shall be allowed discounts at the rates shown in the accompanying schedule marked "A" which is hereby embodied in this agreement as a part thereof.

The terms of payment to be as follows: Four months from the date of invoice, with discount at the rate of 1 per cent. per month for anticipated payment; provided settlement be made within 30 days from date of shipment either by cash or note. Invoices for all goods shipped between October 15th and March 1st, to take the latter date.

Third. Attached hereto marked "B" is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers and also a statement of discounts allowed to such customers other than jobbers for quantity purchases, together with the terms of credit, and freight allowance to which such customers are entitled.

It is an essential condition of this agreement that the jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in schedule "B,"

the intent hereof being to assure the company against the use by the jobbers of this agreement to undersell the company.

The prompt performance by the jobber of the provisions of this agreement as to payment and otherwise is a condition precedent to exacting the continuous performance of said agreement by the company.

In witness whereof the company has caused this instrument to be executed, and the jobber has hereunto set his hand the day and year first above written.

——— ———.
——— ———.

SCHEDULE "A."

Referred to in the Foregoing Agreement and Forming Part Thereof.

	List Price	Discount on Hangings	2 Band Plain Bor.	2 Band Bl'nded Bor.	1 Band Plain Bor.	1 Band Bl'nded Bor.
	Cents.	Per Cent.	Cents.			
Brown Blanks,	at 4	20	15	X	X	X
White Blanks,	at 4 1-2	22 1-2	15	18	20	25
do.	at 5	25	15	18	20	25
do.	at 5 1-2	25	15	18	20	25
do.	at 6	25	18	22	23	28
do.	at 6 1-2	27 1-2	18	22	23	28
do.	at 7	30	18	22	23	28
do.	at 7 1-2	30	20	25	25	30
do.	at 8	32 1-2	20	25	25	30
do.	at 8 1-2	32 1-2	20	25	25	30
do.	at 9	35	20	25	25	30
do.	at 10	35	25	30	30	35
do.	at 12 1-2	35	30	35	35	40
Glimmers, Flats and Denims,	at 7 1-2	30	20	25	25	30
do.	at 8 1-2	30	20	25	25	30
do.	at 9	32 1-2	20	25	25	30
do.	at 10	32 1-2	25	30	30	35

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Glimmers, Flats and Denims,	at 11	32 1-2	25	30	30	35

Schedule "A"—Cont.

do.	at 12 1-2	35	30	35	35	40
do.	at 13 1-2	35	30	35	35	40
do.	at 15	37 1-2	35	40	40	45
do.	at 16	37 1-2	35	40	40	45
do.	at 18	37 1-2	40	45	45	50
do.	at 20	37 1-2	45	50	50	55
do.	at 25	37 1-2	50	55	60	65
do.	at 30	37 1-2	X	X	70	75
Dry Micas and Mica Grounds,	at 10	30	25	30	30	35
do. also Damask Stripes,	at 11	30	25	30	30	35
do. and Satin, plain and embossed,	at 12 1-2	32 1-2	30	35	35	40
do.	at 13 1-2	32 1-2	30	35	35	40
do.	at 15	35	35	40	40	45
do.	at 16	35	35	40	40	45
do.	at 18	37 1-2	40	45	45	50
do.	at 20	37 1-2	45	50	50	55
do.	at 25	37 1-2	50	55	60	65
do.	at 28	37 1-2	55	60	65	70
do.	at 30	37 1-2	X	X	70	75
do.	at 35	37 1-2	X	X	85	85
do.	at 40	37 1-2	X	X	85	85

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Schedule "A"—Cont.

do.	at 50	37 1-2	X	X	95	95
Color Bronzes, 10 oz. plain,	at 7	30	20	25	25	30
do.	at 8	32 1-2	25	30	30	35
do.	at 9	35	25	30	30	35
do.	at 10	35	30	35	35	40
do.	at 11	35	30	35	35	40
do.	at 12 1-2	37 1-2	35	40	40	40
do.	at 15	37 1-2	40	45	45	50
Color Bronzes, 12 oz. and over, 20 and 22 inch,	at 10	37 1-2	30	35	35	40
do. plain and embossed,	at 11	37 1-2	30	35	35	40
do. also embossed metal-ic,	at 12 1-2	40	35	40	40	45
do. and embossed leathers,	at 13 1-2	40	35	40	40	45
do.	at 15	45	40	45	45	50
do.	at 16	45	40	45	45	50
do.	at 18	45	45	50	50	55
do.	at 20	45	50	55	55	60
do.	at 22	45	50	55	60	65
do.	at 23	45	50	55	60	65
do.	at 25	45	55	60	65	70
do.	at 27	45	60	65	70	75
do.	at 30	45	X	X	75	80
do.	at 40	45	X	X	90	90
do.	at 45	45	X	X	100	100

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Schedule "A"—Cont.

Embossed Silks,	at 13 1-2	32 1-2	35	40	40	45
do.	at 15	35	40	45	45	50
do.	at 16	35	40	45	45	50
do.	at 18	37 1-2	45	50	50	55
do.	at 20	37 1-2	50	55	55	60
do.	at 22	37 1-2	50	55	60	65
do.	at 23	37 1-2	50	55	60	65
do.	at 25	37 1-2	55	60	65	70
do.	at 30	37 1-2	X	X	75	80
Tapestries, plain and embossed,	at 45	37 1-2	X	X	100	100
do.	at 12 1-2	32 1-2	35	40	40	45
do.	at 13 1-2	32 1-2	35	40	40	45
do.	at 15	35	40	45	45	50
do.	at 18	37 1-2	45	50	50	55
do.	at 20	37 1-2	50	55	55	60
do.	at 22	37 1-2	50	55	60	65
do.	at 23	37 1-2	50	55	60	65
do.	at 25	37 1-2	55	60	65	70
do.	at 28	37 1-2	60	65	70	75
do.	at 30	37 1-2	X	X	75	80
Plain Ingrains, 30 inch,	at 35	37 1-2	X	X	90	90
Ordinary shades,	at 12 1-2	30	X	X	X	X

Schedule "A"—Cont.

do. 30 in. Medium,	at		X	X	X	X
do. do.	at 18	30	X	X	X	X
do. do. Special do.	at 25	30	X	X	X	X
Varnish Tiles, 20 inch,	at 20	30	50	X	50	X
do. 22 inch,	at 25	30	50	X	50	X
Tints, Ordinary Shades,	at 10	30	X	X	X	X
do. Medium do.	at 15	30	X	X	X	X
do. Special do.	at 25	30	X	X	X	X
Other Special Goods, Bor. & Hanging,	at X	30	X	X	X	X
Exclusive Goods, Bor. & Hang.,	at X	20	X	X	X	X
Borders to match above listed,	at 15	35				
do.	18	40				
do.	20	40				
do.	22	40				
do.	23	40				
do.	25	40				
do.	28	40				
do.	30	40				
do.	35	40				
do.	40	45				
do.	45	45				

do.	50	45
do.	55	45
do. at and over,	60	50

Schedule "A"—Cont.

Exclusive goods to be handled by Jobber in his retail business only.

On goods made by the following factories there shall be deducted from the net result after deducting the above discounts, a deduction of five per cent. (5 per cent) excepting on Plain Ingrains and Varnish Tiles.

Wm. Bailey & Son,
Benton, Heath & Co.,
Cory-Heller Co.,
Conowingo Wall Paper Co.,
Philadelphia Wall Paper Mills,
Middleton Paper Co.,
York Wall Paper Co.,
Standard Wall Paper Co.,
Columbia Wall Paper Co.,
Williamson Bros. Wall Paper Co.,
Tarrytown Wall Paper Co.,
George Halbert,
Johnstown Wall Paper Co.,
Gossler & Wilt Wall Paper Co.,
Hoefer, Meinken & Baeck,
York Card and Paper Co.,
Wm. Campbell & Co.,
The Thomas & Davis Co.

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SCHEDULE "B."

Referred to in the Foregoing Agreement and Forming Part Thereof.

Selling Prices to Other Than Jobbers.

	List Price.	2 Band Plain Bor.	2 Band Bl'nded Bor.	1 Band Plain Bor.	1 Band Bl'nded Bor.
	Cents.	Cents.			
Brown Blanks,	at 4	15	X	X	X
White Blanks,	at 4 1-2	15	18	20	25
do.	at 5	15	18	20	25
do.	at 5 1-2	15	18	20	25
do.	at 6	18	22	23	28
do.	at 6 1-2	18	22	23	28
do.	at 7	18	22	23	28
do.	at 7 1-2	20	25	25	30
do.	at 8	20	25	25	30
do.	at 8 1-2	20	25	25	30
do.	at 9	20	25	25	30
do.	at 10	25	30	30	35
do.	at 12 1-2	30	35	25	40
Glimmers, Flats and Denims,	at 7 1-2	20	25	25	30
do.	at 8 1-2	20	25	25	30

THE LEWIS VOIGHT & SONS CO.

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Schedule "B"—Cont.

do.	at 9	20	25	25	30
do.	at 10	25	30	30	35
do.	at 11	25	30	30	35
do.	at 12 1-2	30	35	35	40
do.	at 13 1-2	30	35	35	40
do.	at 15	35	40	40	45
do.	at 16	35	40	40	45
do.	at 18	40	45	45	50
do.	at 20	45	50	50	55
do.	at 25	50	55	60	65
do.	at 30	X	X	70	75
Dry Micas and Mica Grounds,	at 10	25	30	30	35
do. also Damask Stripes,	at 11	25	30	30	35
do. and Satin, plain and embossed,	at 12 1-2	30	35	35	40
do.	at 13 1-2	30	35	35	40
do.	at 15	35	40	40	45
do.	at 16	35	40	40	45
do.	at 18	40	45	45	50
do.	at 20	45	50	50	55
do.	at 25	50	55	60	65
do.	at 28	55	60	65	70

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Schedule "B"—Cont.

do.	at 30	X	X	70	75
do.	at 35	X	X	85	85
do.	at 40	X	X	85	85
do.	at 50	X	X	95	95
Color Bronzes, 10 oz. plain,	at 7	20	25	25	30
do.	at 8	25	30	30	35
do.	at 9	25	30	30	35
do.	at 10	30	35	35	40
do.	at 11	30	35	35	40
do.	at 12 1-2	35	40	40	40
do.	at 15	40	45	45	50
Color Bronzes, 12 oz. and over, 20 and 22 inch,	at 10	30	35	35	40
do. plain and embossed,	at 11	30	35	35	40
do. also embossed metallic,	at 12 1-2	35	40	40	45
do. and embossed leathers,	at 13 1-2	35	40	40	45
do.	at 15	40	45	45	50
do.	at 16	40	45	45	50
do.	at 18	45	50	50	55
do.	at 20	50	55	55	60
do.	at 22	50	55	60	65
do.	at 23	50	55	60	65
do.	at 25	55	60	65	70

Schedule "B"—Cont.

do.	at 27	60	65	70	75
do.	at 30	X	X	75	80
do.	at 40	X	X	90	90
do.	at 45	X	X	100	100
Embossed Silks,	at 13 1-2	35	40	40	45
do.	at 15	40	45	45	50
do.	at 16	40	45	45	50
do.	at 18	45	50	50	55
do.	at 20	50	55	55	60
do.	at 22	50	55	60	65
do.	at 23	50	55	60	65
do.	at 25	55	60	65	70
do.	at 30	X	X	75	80
do.	at 45	X	X	100	100
Tapestries, plain and embossed,	at 12 1-2	35	40	40	45
do.	at 13 1-2	35	40	40	45
do.	at 15	40	45	45	50
do.	at 18	45	50	50	55
do.	at 20	50	55	55	60
do.	at 22	50	55	60	65
do.	at 23	50	55	60	65
do.	at 25	55	60	65	70
do.	at 28	60	65	70	75

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Schedule "B"—Cont.

do.	at 30	X	X	75	80
do.	at 35	X	X	90	90
Plain Ingrains, 30 inch,					
Ordinary shades,	at 12 1-2	Borders as Listed.			
do. 30 inch Medium,	at				
do. do.,	at 18	Borders as Listed.			
do., do. Special, do.,	at 25	Borders as Listed.			
Varnish Tiles, 20 inch,	at 20	50	X	50	X
do. 22 inch,	at 25	50	X	50	X
Tints, ordinary shades,	at 10	X	X	X	X
do. Medium, do.,	at 15	X	X	X	X
do. Special, do.,	at 15	X	X	X	X

On goods made by the following factories there may be deducted a discount of five per cent. (5 per cent); this discount in the case of quantity lots shall be deducted from the net amount arrived at after deducting the quantity discounts.

Wm. Bailey & Son,
Benton, Heath & Co.,
Cory-Heller Co.,
Conowingo Wall Paper Co.,
Philadelphia Wall Paper Mills,
Middletown Paper Co.,
York Wall Paper Co.,
Standard Wall Paper Co.,
Williamson Bros. Wall Paper Co.,
Tarrytown Wall Paper Co.,
George Halbert,
Johnstown Wall Paper Co.,
Gossler & Wilt Wall Paper Co.,
Hoefer, Meinken & Baeck,
York Card and Paper Co.,
Wm. Campbell & Co.

Terms of Sale: Four (4) months from date of invoice with discount at the rate of one per cent. (1 per cent) per month, for anicipated payment; provided settlement be made within thirty days from date of shipment, either by cash or note. Invoices for goods shipped between October 15th and March 1st, to take the latter date.

Freights may be equalized with the following points; New York, Philadelphia, Baltimore, Pittsburg, Buffalo, Troy, Albany, Portland, Me., Boston, Rochester, N. Y., Scranton, Cleveland, Toledo, Cincinnati, Chicago, St. Louis and Detroit.

Quantity Purchasers: When goods are purchased in the following quantities they will be subject to the following discounts:

Up to 5 1-2 c. inclusive, 600 rolls, 5 per cent; 1200 rolls, 10 per cent.
6 c. to 9 c. inclusive, 300 rolls, 7 1-2 per cent; 600 rolls, 12 1-2 per cent.
10 c. to 15 c. inclusive, 200 rolls, 10 per cent; 400 rolls, 15 per cent.
16 c. and up inclusive, 100 rolls, 10 per cent; 200 rolls, 15 per cent.

Discounts on Borders and Ceiling Papers follow the discounts on Hangings they match.

Plain Ingrains, Varnish Tiles,	200 rolls or more,	10 per cent.
Ingrain Borders,	26 rolls of a kind,	10 per cent.
Ingrain Borders,	50 rolls or over,	15 per cent.

THIS PAGE BOUND VERT

447 "EXHIBIT 3."

In consideration of your having sold us wall paper, etc., at list prices and at quantity discounts as per following schedule.

		Per cent.		Per cent.
Up to 5½c. inclusive.....	600 rolls,	5	1200 rolls	10
6c. to 9c. inclusive.....	300 rolls,	7½	600 rolls	12½
10c. to 15c. inclusive.....	200 rolls,	10	400 rolls	15
16c. and up.....	100 rolls,	10	200 rolls	15

Discounts on borders and ceiling papers follow the discounts on the hangings they match.

Plain Ingrains.

Varnish Tiles, 200 rolls or more 10 per cent.

Ingrain Borders, 26 rolls of a kind 10 per cent.

Ingrain Borders, 50 rolls or over 15 per cent.

We hereby agree not to sell any of such goods to others on terms better or more favorable than those specified in the above schedule nor lower than said list prices, and our faithful performance of this agreement is a condition precedent to the filing of our order.

The intent hereof is to protect you fully against being undersold by us among customers to whom you do allow quantity discounts.

——— ———.

And afterwards, to-wit: on the 19th day of January A. D. 1903 an entry was made upon the journal of said court, clothed in the words and figures following, to-wit:

Journal Entry J. 7—Page 22.

Leave is hereby granted to the plaintiff herein to file a demurrer to amended answer and cross-petition, and a reply to the sixth defense and third counter-claim of said amended answer etc., in this cause, and the same are filed.

And afterwards, to-wit: on the 19th day of January A. D. 1903, a demurrer to amended answer and cross-petition was filed in the clerk's office of said court clothed in the words and figures following, to-wit:

TICAL IN BOOK

448 *Demurrer to Amended Answer and Cross-petition, etc.*

No. 5421.

CONTINENTAL WALL PAPER COMPANY, Plaintiff,
vs.
THE LEWIS VOIGHT & SONS COMPANY, Defendant.

Now comes the plaintiff above named, and by leave of court demures to those parts and paragraphs of the defendant's amended answer and cross-petition which are numbered and designated therein as the second, third, fourth and fifth defenses, and to each of said parts and paragraphs, for the reason that the allegations set forth in said alleged defenses in said answer and cross-petition, and each of them, are insufficient in law, and do not, nor does either of them, state facts sufficient to constitute a defense to the cause of action set forth in the plaintiff's petition herein.

And said plaintiff also demurs to the first and second counter-claims and cross-petitions, and each of them, set forth in the same pleadings hereinabove referred to, for the reason that said counter-claims and cross-petitions designated and numbered respectively the first counter-claim and cross-petition and the second counter-claim and cross-petition do not, nor does either of them, state facts sufficient to constitute a cause of action against said plaintiff, and do not, nor does either of them, in law state a valid counter claim or cross-petition against this plaintiff.

LOUIS MARSHALL,
KITTREDGE & WILBY,
For Plaintiff.

And afterwards, to-wit: on the 19th day of January A. D. 1903, a reply was filed in the clerk's office of said court, clothed in the words and figures following, to-wit:

Reply to the Sixth Defense and Third Counter-claim.

No. 5421.

CONTINENTAL WALL PAPER COMPANY, Plaintiff,
vs.
THE LEWIS VOIGHT & SONS COMPANY, Defendant.

449 Now comes the plaintiff above named, and by leave of court, for reply to the sixth defense and third counter-claim set forth in the amended answer and cross-petition, etc., of the defendant herein, denies each and every allegation in said sixth defense and said third counter-claim set forth; and prays as in its petition and amendment thereto herein.

LOUIS MARSHALL,
KETTRIDGE & WILBY,
Attorney for Plaintiff.

STATE OF OHIO, *Hamilton County, ss:*

Joseph Wilby, being first duly sworn, says that he is attorney and counsel for the Continental Wall Paper Company, plaintiff above named, which is a non-resident of and absent from the County of Hamilton, Ohio, and that the statements contained in the foregoing reply are true, as he verily believes.

JOSEPH WILBY.

Subscribed in my presence, and sworn to before me, this nineteenth day of January, A. D. 1903.

[SEAL.] JOHN J. TAYLOR, JR.,
Notary Public, Hamilton County, Ohio.

40c. paid by plaintiff.

And afterwards, to-wit: on the 27th day of May A. D. 1905, an opinion was filed in the clerk's office, clothed in the words and figures following, to-wit:

Opinion.

No. 5421.

THE CONTINENTAL WALL PAPER COMPANY
vs.
THE LEWIS VOIGHT & SONS CO.

Opinion.

Submitted on demurrer to the 2nd, 3rd, 4th and 5th defenses of the answer.

The demurrer can not be sustained to the second defense.
450 The plaintiff is a corporation duly organized and the transaction in question was between it and the defendant. If the transaction be lawful, then any cause of action arising out of it against the defendant is vested in the plaintiff and no one else can sue upon it. If it be unlawful, recovery will be denied, not because the plaintiff is not the real party in interest, but because the policy of the law will not permit a recovery. If there be a right of action at law, it is, upon the defendant's own showing, vested in the plaintiff.

In the third defense it is shown that the defendant for many years prior to the bringing of this suit was a jobber in buying and selling wall paper in Ohio and other states and territories of the United States; that certain persons, firms and corporations, thirty-six in number, engaged in the manufacture of wall paper, their product being upwards of 98 per cent. of all the wall paper manufactured and sold in the United States, conspiring to form a combination by which to limit the production of wall paper in the United States and to enhance the prices thereof to jobbers, wholesalers, retailers and consumers, and to restrain trade and commerce between the several states and territories of the United States and with foreign nations.

"Agreed with each other, that, while said corporations and persons should retain ownership of their said plants and business and preserve and continue their several identities and operate said manufactories and businesses as before, the control of said businesses, and all matter relating to and effecting the production of said establishments and the price and sale of all wall paper manufactured thereby should be under the control of a committee to be appointed by said several corporations and firms, each to have a voice in such appointment in proportion to the capacity of the several factories owned by them respectively; that such committee should adopt rules and regulations governing the manner of conducting the business of said firms nad corporations, the hours said factories owned by them should be operated, the patterns of wall paper to be manufactured by them, the times when samples of the goods to be manufactured for the ensuing season should be submitted to a pricing committee appointed by said committee, to enable it to classify and fix the list prices thereof; to fix and determine list prices, discounts, terms of sale, equalization of freight rates and all other matters affecting the production and regulation of prices, and the classification of the dealers in wall paper in the United States; and the prices at which wall paper should
451 be sold to, and by, such several classes; and the division of the profits arising, among said several corporations and firms, not in proportion to their production and sales, but in proportion to their capacity; and, further, that, to secure the faithful performance by each of said persons and corporations of the provisions of said trust agreement, they should each pay a sum into a common pool, in proportion to the capacity of their respective manufactories, which said sum should be forfeited by any of such said manufacturers who should break said agreement, competing with the other parties to said agreement, or sell at other or different prices than those to be fixed by said committee."

And to defeat and evade the law, it was further agreed that,

"For the more effectual carrying out of said scheme, a corporation should be ostensibly formed under the laws of the state of New York, to be called 'The Continental Wall Paper Company,' being the plaintiff herein, with a capital stock of $200,000.00, to be divided into 16,000 shares of the par value of $12.50 each, said stock to be divided among said corporations and firms in proportion to the number of rolls of paper manufactured by them in the year preceding said month of July, A. D. 1898."

That seven directors of said Continental Wall Paper Co. should be selected by the members of the combination; that said corporations and firms each and the Continental Wall Paper Co. should sign a printed contract, a copy of which is attached to the answer as Exhibit 1, in which the manufacturer is designated as the vendor and the plaintiff as the company, and which provides, among other things, in substance, that the company shall act as selling agent in handling the entire product of the vendor at the prices set forth in schedule A, B and C of Exhibit 1; that there shall be no enlargement of the manufacturing facilities of the vendor, but that new machinery may be substituted for old which may become useless. It also provides

for the classification of the purchasers of wall paper. And it was further agreed that the Continental Wall Paper Co. should require all dealers in wall paper, whether jobbers or wholesalers, to sign an agreement, a copy of which is attached to the answer as Exhibit 2, which among other things provides:

First. "That the company will sell, subject to such limitations as it may impose, and the jobber will purchase, the entire requirements of the jobber, in his business of selling wall paper, for the business year ending July 1st, 1899, to the amount of a gross valuation,
452 without discounts, of — the jobber reserving to himself the right to purchase such merchandise as he may need in excess of — from others * * *

Second. "The jobber shall be allowed discounts at the rate shown in the accompanying schedule, marked, A, which is hereby embodied in this agreement as a part thereof."

Third. "Attached hereto marked "B" is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers and also a statement of discounts allowed to such customers other than jobbers for quantity purchases, together with the terms of credit, and freight allowance to which such customers are entitled."

"It is an essential condition of this agreement that the jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in schedule "B," the intent hereof being to assure the company against the use by the jobber of this agreement to undersell the company."

And in the event of the refusal of any wholesaler to sign such agreement, no paper should be sold to him, and he should be driven out of business.

It is further shown that "to conceal the fact that it (Exhibit No. 2) was an agreement to purchase from no one but said company, and the members of said combination and trust, the amount of purchases made by the buyer, in the previous year, from all the members of said combination and trust, being the entire amount of purchases made by such buyer, during the preceding year, was ascertained and an amount at least double thereof, being an amount supposed to be, and which was, in fact, more than, by any possibility, could be needed by such buyer, was inserted in said blanks as the amount to be purchased by such buyer from the Company.

And it is further shown that "At the time of the formation of said combination and trust, John Waldron & Son and the Kankanna Machine Company, were the only manufacturers in the United States of wall paper manufacturing machinery *in the United States,* having their factories, one in New Brunswick N. J., and the other in Kaukauna, Wis., and were engaged in manufacturing wall paper machinery in said states * * * in further carrying out of said combination and trust, * * * , agreements were made between said manufacturers of machinery and said plaintiff, by which, for

certain consideration, said manufacturers of machinery
453 agreed, during the existence of plaintiff, to sell wall paper manufacturing machinery only — it and the members of said combination and not to any new mills desiring to start.

And it is further shown that "the members of said combination and trust, the said plaintiff, further to carry out said agreement, compelled all the other wholesale and quantity buyers to sign agreements, in the form attached to this answer, marked "Exhibit 3," the same being a printed form with blanks for signatures, and having attached thereto, the prices shown as Schedule C, attached to Exhibit 1, which are the List prices referred to in said agreement."

And it is further shown that the combination had the power and the will to prevent the defendant from obtaining wall paper for its trade, and to drive it out of business, and it was compelled to, and did, sign the agreement attached to the answer as Exhibit 2, and in carrying out said scheme and combination, did purchase from the plaintiff, and the plaintiff did deliver to the defendant "in the year from September 1898 to September 1899, wall paper of which this defendant paid to said plaintiff for and per direction of the members of said combination the sum of $144854.14." as shown by the statement of account attached to the petition; that the prices charged in the Exhibit attached to the amended petition are the prices fixed and determined in pursuance of and by the combination or trust agreement, and at least one half more than they would otherwise have been, and that the wall paper was purchased by the defendant and delivered by the plaintiff in pursuance of said combination or trust agreement, and that this suit is an attempt to enforce and recover the prices so fixed by said combination.

In short, this defense shows a combination of manufacturers of wall paper, of manufacturers of wall paper machinery, and of jobbers and wholesalers of wall paper, with power to control the production and sale of all wall paper machinery, and 98 per cent. of all wall paper manufactured in the United States, and that in the exercise of this power, it limited production, prevented competition, fixed and enhanced the prices of wall paper, and compelled the jobbers and wholesalers throughout the United States to buy and sell to retailers and consumers at the prices so fixed, and that this action is founded on an account for wall paper sold to the defendant as one of the members of the combination, by the plaintiff as the agent and
454 trustee of the combination, at the prices so fixed by the combination and in furtherance of the purposes of its organization.

Assuming for the purpose of the demurrer that the allegations of this defense are true, it follows that the combination was illegal and unlawful within the meaning of the anti-trust laws of Ohio and of the United States.

The present case differs from the Connolly case (184 U. S., 540-549) in this; that the purchases by the defendant had direct and necessary connection with the illegal combination. The defendant was not an outsider, purchasing goods of the plaintiff in the usual and ordinary course of business, but a member of the combination

who purchased the goods from the combination through its representative and agent, upon the terms prescribed by the combination and in furtherance of its purposes. The demurrer to this defense therefore is not well taken and will be overruled.

Under the fourth and fifth defenses, the defendant seeks to recover by way of cross petition under the anti-trust laws of Ohio and of the United States, as damages, double and treble the moneys paid by it to the plaintiff for wall paper, as shown by the Exhibits attached to the petition and the amendment thereto. The demurrer to these defenses is well taken and will be sustained. It is not admitted to these defenses that the defendant was a party to the illegal combination, but the defendant is bound by the admission of the third defense. It will not be permitted to admit for the purposes of the third defense, a fact pertinent to the transaction under investigation.

And afterwards, to-wit: on the 29th day of September A. D. 1905, an Entry was made upon the Journal of said Court, clothed in the words and figures following, to-wit:

Entry Journal 8—Page 136.

Entry on Demurrer to Amended Answer and Cross-petition, and Final Judgment.

This cause coming on to be heard upon the demurrers of the plaintiff to the second, third, fourth and fifth defenses of the defendant's amended answer, and to the first andl second counterclaims and cross-petitions of said defendant, as set forth in said amended answer and cross-petition, was argued and submitted to the court.

And the Court, on consideration, finds that said demurrer
455 is well taken, and sustains the same, as to the second, fourth and fifth defenses, and the first and second counterclaims and cross-petitions in said amended answer and cross petition set forth; to which defendant excepts, but that said demurrer is not well taken as to said third defense in said amended answer and cross-petition, and the Court therefore overrules the demurrer as to said third defense; to which the plaintiff, by its counsel, then and there excepted.

And the plaintiff thereupon not desiring to plead further, and the said defendant not desiring to plead further, it is considered and adjudged that upon the allegations of said third defense said defendant is entitled to judgment dismissing the petition and amendment to petition herein; and that the plaintiff is entitled to judgment dismissing the first and second counter claims and cross-petitions set forth in the amended answer and cross-petition of said defendant herein.

It is therefore considered and adjudged that the petition of the plaintiff and the amendment to petition of the plaintiff herein be, and they are hereby dismissed; and that the said first and second counter-claims and cross-petitions of the defendant and each of them, as set forth in the amended answer and cross-petition of the defend-

ant herein be, and they are hereby, dismissed; and that defendant recover of the said plaintiff its costs herein, taxed at $——.

To which action of the Court dismissing the petition and amendment to petition of the plaintiff, and adjudging that said defendant recover its costs of the plaintiff, the said plaintiff, by its counsel, then and there excepted, and to which action of the Court in dismissing said cross-petitions said defendant excepts.

And afterwards, to-wit: on the 29th day of September A. D. 1905. A petition for writ of Error was filed in the Clerk's office of said Court clothed in the words and figures following, to-wit:

Petition for Writ of Error.

United States Circuit Court, Southern District of Ohio, Western Division.

456 No. 5421.

CONTINENTAL WALL PAPER CO., Plaintiff,
vs.
THE LEWIS VOIGHT & SONS CO., Defendant.

Petition for Writ of Error and Prayer for Reversal.

Now comes the Continental Wall Paper Company, the plaintiff in the above entitled cause, and says that on or about the 29th day of September, A. D. 1905, the said Circuit Court of the United States for the Southern District of Ohio, Western Division, entered a judgment herein in favor of said defendant, and against this plaintiff, dismissing the petition and amendment to petition of said plaintiff herein, and adjudging that said defendant recover costs from the said plaintiff, in which judgment and proceedings certain errors were committed to the prejudice of this plaintiff; all of which were duly excepted to at the time by this plaintiff; and will more fully appear from the assignment of errors filed herewith.

Wherefore, this plaintiff prays that a writ of error may be allowed and may issue in this behalf to the United States Circuit Court of Appeals for the Sixth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated may be sent to said Circuit Court of Appeals; and plaintiff prays that said judgment may be reversed and set aside for the said errors complained of, and this plaintiff restored to all things it may have lost by reason thereof.

LOUIS MARSHALL,
JOSEPH WILBY,
Attorneys for Plaintiff, Continental Wall Paper Co.

And afterwards, to-wit: on the 29th day of September A. D. 1905 an Assignment of Errors was filed in the Clerk's office of said Court, clothed in the words and figures following, to-wit:

Assignment of Errors.

457 United States Circuit Court, Southern District of Ohio, Western Division.

No. 5421.

CONTINENTAL WALL PAPER CO., Plaintiff,
vs.
THE LEWIS VOIGHT & SONS CO., Defendant.

Assignment of Errors.

The plaintiff above named, in connection with its petition for a writ of error, makes the following assignment of errors which it avers occurred in the proceedings and were committed in the judgment upon the hearing of said cause upon demurrer to the amended answer and cross-petition of the defendant; and upon and in the final judgment dismissing the plaintiff's petition and amendment.

One. The said Circuit Court of the United States for the Southern District of Ohio, Western Division, erred in finding that the demurrer of this plaintiff to and as to the third defense in the amended answer and cross-petition of said defendant was not well taken.

Two. Said Court erred in overruling the demurrer of this plaintiff to and as to the third defense in the amended answer and cross-petition of said defendant.

Three. Said Court erred in considering and adjudging that the petition of this plaintiff and the amendment to said petition be dismissed.

Four. Said Court erred in considering and adjudging that upon the allegations of the third defense of the amended answer and cross-petition of said defendant the said defendant was and is entitled to judgment dismissing the petition and amendment to petition herein.

Five. Said Court erred in dismissing the petition and amendment to petition of the plaintiff herein.

Six. Said Court erred in adjudging that said defendant recover its cost of the plaintiff.

Seven. Said Court erred in granting in part motion of defendant to make petition definite and certain, on April 7, 1900.

LOUIS MARSHALL,
JOSEPH WILBY,
Attorneys for Plaintiff, The Continental Wall Paper Co.

458 And afterwards, to-wit: on the 29th day of September A. D. 1905, an Entry was made upon the Journal of said Court clothed in the words and figures following, to-wit:

Entry Journal 8, Page 136.

Entry Allowing Writ of Error.

This day came the said plaintiff, by its counsel, and presented its petition for the allowance and issuance of a writ of error herein, and an assignment of errors, accompanying said petition; which petition, upon consideration by the Court, is hereby allowed, and the Court allows and orders to issue a writ of error to the United States Circuit Court of Appeals for the Sixth Circuit, upon the filing of a bond in the sum of One Thousand ($1000) Dollars, to be approved by the Court.

And afterwards, to-wit, on the 30th day of September A. D. 1905, a Bond was filed in the Clerk's office of said Court, clothed in the words and figures following, to-wit:

Bond.

No. 5421.

CONTINENTAL WALL PAPER CO., Plaintiff,
vs.
THE LEWIS VOIGHT & SONS CO., Defendant.

Bond.

Know all men by these presents, that The Continental Wall Paper Company, as principal, and American Surety Company of New York as Surety, are held and firmly bound unto The Lewis Voight & Sons Company, in the sum of One Thousand Dollars, to be paid to the said The Lewis Voight & Sons Company, or its successors, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our successors, firmly by these presents.

Sealed with our seals. Dated this 30th day of September, A. D. 1905.

Whereas, the above named Continental Wall Paper Com-
459 pany has taken out a writ of error and appeal to the Circuit Court of Appeals of the United States for the Sixth Circuit, to reverse the judgment rendered in the above entitled action by the Circuit Court of the United States, for the Southern District of Ohio, Western Division.

Now, therefore, the condition of this obligation is such that if the above named Continental Wall Paper Company shall prosecute its said writ of error and appeal to effect and answer all costs if it shall

fail to make good its plea, then this obligation to be void; otherwise to remain in full force and effect.

THE CONTINENTAL WALL PAPER CO., [SEAL.]
By JOSEPH WILBY, *Attorney.*
AMERICAN SURETY COMPANY OF NEW YORK,
By H. C. YERGASON.
LE MEAR H. MASON. [SEAL.]

Signed, sealed and delivered in presence of:
ROBERT C. GEORGI.
WILLIAM RILEY.

The above security is approved.

A. C. THOMPSON,
District Judge of the United States for the Southern District of Ohio, Sitting and Holding the Circuit Court for said District and Division.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, Benjamin R. Cowen, Clerk of the Circuit Court of the United States, within and for the District and Division aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said Court in the above entitled cause as the same appears of record and on file in the Clerk's office of said Court.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court at Cincinnati, Ohio, this 18th day of October A. D. 1905.

B. R. COWEN, *Clerk,*
By ROBT. C. GEORGI, [SEAL.]
Deputy Clerk.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial* Court, *ss:*

The President of the United States to the Honorable the Judge of the Circuit Court of the United States for the Southern District of Ohio, Greeting:

460 Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between The Continental Wall Paper Company, a corporation, Plaintiff and The Lewis Voight & Sons Company, a corporation, Defendant, a manifest error hath happened, to the great damage of the said The Continental Wall Paper Company a corporation as by its complaint appears. We be-

ing willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the United States Circuit Court of Appeals for the Sixth Circuit, together with this writ, so that you have the same at Cincinnati, in said Circuit, on the* 30th day of October next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 30th day of September, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America the one hundred and thirtieth.

B. R. COWEN,
Clerk of the Circuit Court of the United States, S. D. O.,
[SEAL.] By ROBT. C. GEORGI, *Deputy.*

Allowed by
A. C. THOMPSON,
Judge of United States District Court for Southern District of Ohio, Sitting and Holding United States Circuit Court for S. D. O.

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*Not exceeding 30 days from the day of signing the citation.

No. 5421. United States Circuit Court, Southern District of Ohio, Western Division. The Continental Wall Paper Company, *vs.* The Lewis Voight & Sons Co. Writ of Error. Filed September 30th, 1905. B. R. Cowen Clerk.

United States Circuit Court of Appeals for the Sixth Circuit.

UNITED STATES OF AMERICA, *Sixth Judicial* Court, *ss:*

461 To The Lewis Voight & Sons Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said Circuit, on the* 30th day of October next, pursuant to a writ of Error, filed in the Clerk's office of the Circuit Court of the United States for the Southern District of Ohio, wherein The Continental Wall Paper Company, a corporation is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the Judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States this 30th day of September, in the year of our Lord one thousand nine hundred and five, and of the Independence of the United States of America the one hundred and thirtieth.

A. C. THOMPSON,
Judge of United States District Court for Southern District of Ohio, Sitting and Holding United States Circuit Court.

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*Not exceeding 30 days from the day of signing the citation.

CINCINNATI, OHIO, *October* 9, 1905.

Received this writ at Cincinnati, Ohio, on the 9th day of October 1905, and on the same day served the within named The Lewis Voight Sons Company, by handing a true copy of this writ, with the endorsement thereon, to Harlan Cleveland, attorney of record in said case, at Cincinnati.

1 copy	.30
1 service	$2.00
1 mile	.06
Total	$2.36

V. I. FAGIN,
U. S. Marshall, S. D. O.,
By W. J. SANDERSON, *Deputy.*

Marshal's Civil Docket No. 3447. No. 5421. United States Circuit Court, Southern District of Ohio, Western Division. The Continental Wall Paper Company, *vs.* The Lewis Voight & Sons Company. Citation. Filed October, 9, 1905. B. R. Cowen, Clerk. $50.00 deposited.

462 And afterwards, to-wit: on the 28th day of October, A. D. 1905, an appearance was filed in said cause, clothed in the words and figures as follows, to-wit:

United States Circuit Court of Appeals for the Sixth Circuit.

No. 1509.

CONTINENTAL WALL PAPER CO.
vs.
LEWIS VOIGHT SONS COMPANY.

Frank O. Loveland, Clerk of said Court:

Please enter my appearance as Counsel for the Plaintiff in Error.

JOSEPH WILBY.
LOUIS MARSHALL.

October 28, 1905.

And afterwards, to-wit: on the 7th day of November A. D. 1906, the following entry was made upon the journal of said court:

No. 1509.

CONTINENTAL WALL PAPER CO.
vs.
THE LEWIS VOIGHT & SONS CO.

Before Lurton, Severens, and Cochran, JJ.

463 This cause is argued for plaintiff in error in part by Mr. Louis Marshall and is continued until tomorrow for further argument.

And afterwards, to wit: on the 8th day of November, A. D. 1906 the following entry was made upon the journal of said court, to-wit:

No. 1509.

CONTINENTAL WALL PAPER CO.
vs.
LEWIS VOIGHT & SONS CO.

This cause is further argued for appellant by Mr. Louis Marshall and is continued until tomorrow for further argument.

And afterwards, to-wit: on the 9th day of November, A. D. 1906 the following entry was made upon the journal of said court, to-wit:

No. 1509.

CONTINENTAL WALL PAPER CO.
vs.
LEWIS VOIGHT & SONS CO.

This cause is argued further for defendant in error by Mr. Orris P. Cobb and Morrison R. Waite and is submitted to the court.

464 And afterwards, to-wit: on the 4th day of December, A. D. 1906 the following judgment was entered in said cause, to-wit:

United States Circuit Court of Appeals for the Sixth Circuit.

No. 1509.

CONTINENTAL WALL PAPER CO.
vs.
LEWIS VOIGHT & SONS CO.

Error to the Circuit Court of the United States for the Southern District of Ohio.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said Circuit Court, in this cause be and the same is hereby affirmed with costs.

And afterwards, to-wit: on the 5th day of January, A. D. 1907 an opinion was filed in said cause clothed in the words and figures as follows:

Opinion.

465 Filed Jan. 5, 1907. Frank O. Loveland, Clerk.

United States Circuit Court of Appeals, Sixth Circuit.

No. 1509.

CONTINENTAL WALL PAPER COMPANY
vs.
LEWIS VOIGHT AND SONS COMPANY.

Error to the Circuit Court of the United States for the Southern District of Ohio.

Submitted November 9, 1906; Decided December 4, 1906.

Before Lurton and Severens, Circuit Judges, and Cochran, District Judge.

This is an action to recover a balance of $57,762.10 due on account for wall paper sold and delivered to defendants. The case turned upon the sufficiency of the third defense submitted by the answer to the petition of the plaintiff-. To this defense the plaintiffs demurred. This demurrer was overruled. The plaintiffs declined to plead further. Whereupon judgment was rendered for the defendants, dismissing the petition and taxing the plaintiff with costs. The defense so held to be sufficient was in substance:

First. That the plaintiff is a member of an illegal combination among the manufacturers of wall paper, formed for the purpose of enhancing prices, stifling competition and restraining freedom of commerce between the states and with foreign nations, being such a combination or trust as is forbidden by the Anti-Trust Act of 1890, and by the laws of Ohio.

Second. That the defendants were compelled to become parties to the illegal combination and that the contract upon which
466 this suit depends for price and terms of sale constitutes one of the agreements which go to make up the illegal combination represented by the Continental Wall Paper Company.

The answer embodying the defense here involved, in substance avers: That the National Paper Company, a corporation owning or controlling a large number of wall paper factories situated within the states of New York, Pennsylvania, New Jersey and Massachusetts, together with a large number of independent firms and corporations engaged in the same manufacture, combined or conspired together for the purpose of controlling the wall paper production in this country by suppressing competition among themselves and enhancing the price of that article to jobbers, wholesalers, retailers and consumers. That for this purpose and this end, and to better cover this scheme, they caused the organization under the laws of New York of a corporation known as the Continental Wall Paper Company, with a capital stock of $200,000.00, divided into 16,000 shares, the shares to be divided among the conspiring firms and corporations in proportion to the production of each factory during the year preceding July, 1898. That the scheme and agreement was, that the National Wall Paper Company, as representative of a large number of corporations dominated by it, should select three directors, the other firms and corporations three more, and that the six directors so selected should select a seventh and the seven directors should direct the combination through the corporate name of the Continental Wall Paper Company. That the plan was that each of the combining concerns should enter into a contract, styling themselves "vendors," with the said company. These contracts to be signed by the several corporations and firms entering into this combination were identical in terms and were in the following words and figures:

"EXHIBIT 1."

"This agreement, made this — day of ——, in the year one thousand eight hundred and ninety-eight, by and between ——, a corporation organized under the laws of the state of ——
467 (hereinafter called the Vendor) party of the first part, and the Continental Wall Paper Company, a corporation organized under the laws of the state of New York, (hereinafter called the Company), part of the second part,

Whereas, the Vendor is engaged in the manufacture and sale of wall paper, borders and other articles usually produced and handled in connection therewith, and the company is desirous of acting

as its selling agent in handling the entire product of the Vendor; and,

Whereas, the company has an authorized capital of two hundred thousand dollars, divided into 16,000 shares, of the par value of $12.50 each; and

Whereas, the dealer is desirous of acquiring —— shares of the stock of said company at par, and to that end has offered to enter into this agreement and to secure the performance thereof by the deposit of said shares.

Now, therefore, in consideration of the foregoing recitals, and for other good and valuable consideration, it is agreed, between the parties hereto, as follows:

First. The Vendor hereby sells unto the company, and the latter agrees to purchase, the entire product of wall paper that may be manufactured by the Vendor for the period from July 20th, 1898, to the first day of July, 1899.

The prices at which the merchandise shall be sold to the company are set forth in a schedule hereto annexed, marked "A," and hereby made a part of this agreement.

The Vendor further grants unto the company the right to two renewals of said contract of one year each, provided that in the event of the election of the company to avail itself of either of said renewals, it shall so signify in writing to the Vendor before the first day of June next preceding the renewal term, and provided further that such election to renew shall be accompanied by the written consents of all the registered stockholders of the company, including that of the Vendor.

Second. The goods acquired by the company from the Vendor hereunder, which are to be sold to jobbers, shall be sold by the company and not by the Vendor for the account of the company. Such sale shall be made by the company at discounts from road prices fixed in the schedule hereto annexed, marked "B," which is hereby made part of this agreement. The Vendor will deliver such goods upon the direction of the company at the risk and for the account of the latter f. o. b. at the place of manufacture, provided, however, that in all cases in which the goods are manufactured at places other than the cities of New York or
468 Philadelphia the Vendor will equalize the freights with either of said cities out of the proceeds receivable for such goods. Memorandum invoices shall be supplied to the customer and to the company immediately upon the shipment and delivery of such goods, said invoices specifying quantities and road prices.

Third. There shall be furnished by the Vendor to the company on the 7th, 14th, 21st and last days of each month (except when those days fall on Sundays, and then on the next succeeding day) a just and true statement of all shipments and deliveries of merchandise included in this contract which the Vendor may make for the account of the company, which statement shall contain the names of the purchasers, the character of the goods sold and the prices at which they were sold, to the end that the company may

make the proper charges, and in order to entitle the Vendor to be credited with the agreed cost price for such goods.

Each of such statements of shipments shall be accompanied by an affidavit of one of the officers of the Vendor and of one of its bookkeepers, and of one of its shipping clerks, to the effect that the information therein contained is true.

Fourth. The company shall permit the Vendor to sell in its own name, and the latter hereby agrees to sell for the account of the company such of the goods manufactured by the Vendor as are to be disposed of to purchasers not classified as jobbers, which sales shall be made at the cost and expense of the Vendor, said Vendor hereby guaranteeing all credits and the collection of all accounts connected with such sales. The prices at which and the terms upon which, such goods are to be sold are designated in this agreement as the "Road prices," and are contained in a schedule hereto annexed marked "C," which is hereby made a part of this agreement.

On the 7th, 14th, 21st and last days of each month (except when those days fall on Sundays, and then on the next succeeding days) the Vendor will furnish to the company a statement showing all the shipments made on account of such sales, which statements shall contain the names of the purchasers, the character of the goods and the prices at which they were sold and such sales shall be credited to the Vendor by the company at the prices fixed in schedule "A," and shall be charged against said Vendor at the prices at which they were sold, which shall in no event be less than those designated in schedule "C."

The Vendor is to receive for its services and expenses connected with such sales and allowances discounts equal to those
469 who are designated in a classification made by the parties hereto as "second class jobbers," less the discounts made on sales to purchasers designated in the accompanying schedules as "quantitive purchasers" on which the Vendor has allowed the quantitive discount except that where special and exclusive goods are sold there shall be an allowance of 30 per cent. discount to the vendor.

The prices of goods as fixed by schedules "A" and "C" may be altered from time to time, but the discounts allowed to jobbers shall not be altered at any time during the term of this agreement.

Fifth. The Vendor will make collection of all accounts for goods sold by it for the account of the company under the provisions of this agreement, except for sales to jobbers (which accounts the company is to collect) and will, on the 10th day of each and every month during the term of this agreement, acount to the company. Such account shall be accompanied by a payment by the Vendor to the company of the difference between the prices at which the goods are agreed to be sold to the company as embodied in schedule "A," and the prices at which the Vendor has agreed to dispose of said goods as contained in schedule "C."

The purchases made by the company from the Vendor hereunder shall be upon the same credit and terms as those accorded to other dealers, but the company shall have the right to anticipate the due date of all such purchases, and will pay, on the 10th day of each

month, to the Vendor a sum on account of all shipments of the preceding month equal to not less than 30 per cent. of the road prices of goods shipped to jobbers by the company.

Sixth. The Vendor hereby grants unto the company the right, and it shall be the duty of the latter, through its officers selected for that purpose, to audit the books of account of the Vendor as to production, sales and shipments at such times and in such manner as the company may, from time to time, deem necessary or proper. This provision is of the essence of the agreement, and a failure on the part of the Vendor to faithfully perform the same shall operate as a breach of the contract entitling the company to abrogate the agreement and to such damages as it may be able to establish in addition to the absolute transfer and surrender to it of the stock to be pledged as hereinafter provided.

Seventh. There shall be a committee selected from the company to be known as the auditing committee, which shall be made up from among the directors. Said committee shall have power
470 to establish such a system of bookkeeping as in its judgment may be advisable.

In order to conform as nearly as may be to the laws of the various states in which the factories of the vendor are located, it is understood that the vendor shall not be at liberty to require from the company the acceptance of the product of more than ten hours per day of any one of said factories.

The product intended to be sold to the company hereunder, and which the latter undertakes to acquire, does not contemplate the enlargement of the manufacturing facilities of the vendor, but nothing herein contained shall be construed as affecting the right of the vendor to substitute new machinery of the same capacity for any now in use which may become useless through wear or through destruction by fire or other casualty.

The power to designate the parties who are to be classed as jobbers and the discounts to which they are entitled is expressly reserved by the company, and such designation is to be made through its board of directors, but the vendor shall have the right to select the jobbers through whom the goods manufactured by it are to be distributed, and to designate the amount of its goods such jobbers may buy, subject to such credit limitations as the board of directors may impose.

All orders placed with the vendor by jobbers on behalf of the company must be at once reported to the latter.

Eighth. The company hereby agrees to sell and the vendor agrees to purchase —— shares of the common stock of the company, for which stock the vendor agrees to pay the sum of —— in cash as soon after the execution and delivery of this agreement as the same may be demanded by the company, but only if and when the entire share capital of the company shall have been fully subscribed at not less than par.

The vendor will, after paying for said shares of stock, endorse the certificates representing the same and deliver the certificates so

endorsed in blank to the company, upon the trust and agreement that the company shall hold said certificates as security for the performance by the vendor of each and all of the covenants and conditions of this agreement, and upon the refusal, neglect or omission of the vendor, its successors or assigns, to perform this agreement, or any part thereof, the said shares of stock and the certificates represented thereby shall be immediately sold by the company at public or private sale, without notice, upon such terms and at such price as the company or its officers may deem reasonable, and that
471 the proceeds of sale be paid into the treasury of the company as the agreed and liquidated damages to the company for the breach of said agreement.

The parties hereto have fixed upon the said stock, and the proceeds thereof as liquidated damages, because of the difficulty in establishing, in a court of law, the actual damage that would be suffered by the company in the event of the refusal, neglect or omission to perform this agreement, and in order to avoid the difficulty of such proof.

In witness whereof, the vendor and the company have respectively caused this agreement to be executed by their respective Presidents, and their respective corporate seals to be hereto attached pursuant to resolutions of their respective board of directors, the day and year first above written."

It would unduly lengthen this statement to fully set out the schedules referred to in the above exhibit and made a part of the contract between the so called vendors and the company. The answer then avers, that the prices to be charged the company for the product of each so called vendor was the estimated cost of production and incidental expense to such manufacturer of carrying out his or its part of the contract.

Schedule A of the contract sets out the "list price" of all qualities of paper and in a parallel column the sale price to the company. Schedule B sets out the sale price by the company to the several classes of jobbers, which the company binds itself to exact, and the terms of sale. The gross sale price in this schedule is the list price of schedule A with a discount which depends upon the classification of jobbers provided for by the seventh clause of the contract. Schedule C sets out the sale price to purchasers "other than jobbers" and terms of sale, these prices being also designated as "Road Prices." These prices are the "list prices" of schedule A and B with no discount. To purchasers described as "other than jobbers," certain discounts are provided, dependent upon quantity. Under clause 7 of the contract, set out above, "the company," acting through its directors selected in the manner heretofore mentioned, is
472 given authority to classify jobbers and *and* prescribe the discount to each class, each "vendor" being allowed "to select the jobbers through whom the goods manufactured by it are to be distributed and to designate the amount of its goods such jobbers may buy."

The distribution of profit over cost to the company may be illustrated by taking two classes of wall paper, one a cheap kind and

the other more expensive. Thus the list of wall paper styled "Brown," is four cents per roll. The sale price to the company two cents. The price by the company to "jobbers" in the first class is four cents with a discount of 20 per cent., to "jobbers" in the second class, four cents with a discount of 17½ per cent., to "jobbers" in the third class, four cents with a discount of 15 per cent. The selling price to all purchasers other than those classified as jobbers is fixed at four cents flat, unless a discount of small proportions is obtained as a result of a purchase bringing the buyer within the terms of those called "quantity purchasers." "Embossed Bronzes" of one class are listed 18 cents per bolt; jobbers being allowed a discount of 45 per cent., 40 per cent. or 30 per cent., according to the class they have been placed in. All the schedules contain a provision for the equalization of freights with certain cities, thus elminating advantages due to locality. It is further averred in said defense, that the companies, corporations and firms which organized said company and which subsequently subscribed for stock and signed one of the agreements like that heretofore set forth, constituted 98 per cent. of all the manufacturers of wall paper in this country. It is further stated, that for better carrying out of the said combination, agreements were made by the plaintiff with parties, companies and corporations within the United States and Canada "by which each agreed not to compete with the other nor cut prices, the Americans in Canada and the Canadians in the United States." It is also alleged that to further carry out the purpose to prevent competition and enhance prices, that a contract was made between plaintiff and John Waldron and Son and the Kaukauna Machine Company, the only two manufacturers of wall paper
473 machinery in the United States, one having a manufactory in New Brunswick, New Jersey, and the other a manufactory in Kaukauna, Wisconsin, by which said manufacturers agreed, during the existence of the plaintiff, to sell wall paper machinery only to it and said combination and not to any mills preparing to start.

It is then averred, that all wholesale dealers in the United States were arbitrarily divided into two classes; jobbers and "Road" or "Quantity Buyers," and that the jobbers were arbitrarily divided into the three classes heretofore mentioned and the other wholesalers into "road" or "quantity buyers" and "special buyers" with the purpose that all should then be compelled to sign written agreements obligating themselves to buy their entire stock of merchandise from the plaintiff direct, or through members of the combination, and to this end identical printed agreements were presented to all jobbers and wholesalers throughout the United States and the territories by which each obligated itself to buy their entire purchases of wall paper from said plaintiff at list prices of schedule "A," heretofore set out, subject to discounts shown by schedule accompanying each such agreement and binding each such jobber or wholesaler not to sell at prices lower or better than those shown by another schedule accompanying each such agreement. A copy of the agreement, so required to be signed by each jobber and wholesaler, is made a part of the answer as exhibit 2. Same is here set out below.

"EXHIBIT 2."

"An agreement made this — day of —— in the year one thousand eight hundred and ninety-eight, between the Continental Wall Paper Company, a corporation organized under the laws of the state of New York, (hereinafter called the company), party of the first part and —— of —— (hereinafter called the jobber) party of the second part.

In consideration of the sum of one dollar, paid by the jobber unto the company for the granting of this agreement, the receipt whereof is hereby acknowledged, and other valuable considerations.

It is agreed, between the parties hereto as follows:

First. That the company will sell, subject to such credit
474 limitation as it may impose, and the jobber will purchase the entire requirements of the jobber in his business of selling wall paper for the business year ending July 1st, 1899, to the amount of a gross value, without discounts, of —— the jobber reserving to himself the right to purchase such merchandise as he may need in excess of —— from others.

The company is to deliver the goods without additional charge f. o. b. at New York or Philadelphia, or to equalize freights from the places at which it makes deliveries to either of said cities.

Second. The jobber shall be allowed discounts at the rates shown in the accompanying schedule marked "A" which is hereby embodied in this agreement as a part thereof.

The terms of payment to be as follows: Four months from the date of invoice, with discount at the rate of 1 per cent. per month for anticipated payment; provided settlement be made within 30 days from date of shipment either by cash or note. Invoices for all goods shipped between October 15th and March 1st to take the latter date.

Third. Attached hereto marked "B" is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers and also a statement of discounts allowed to such customers other than jobbers for quantity purchases, together with the terms of credit, and freight allowance to which such customers are entitled.

It is an essential condition of this agreement that the jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in schedule "B," the intent hereof being to assure the company against the use by the jobbers of this agreement to undersell the company.

The prompt performance by the jobber of the provision of this agreement as to payment and otherwise is a condition precedent to exacting the continuous performance of said agreement by the company.

In witness whereof the company has caused this instrument to be executed and the jobber has hereunto set his hand the day and year first above written.

—— ——.
—— ——."

Schedule "A" of the above agreement is identical with schedule "B" of the agreement between "vendors and the company,"
475 heretofore set out, and schedule "B," attached to and made a part of exhibit 2, above set out in full, is same as schedule "C," attached to exhibit 1, heretofore set out.

It is charged that "the immediate, intended and direct effect of said combination and agreements was the stifling of competition between said manufacturers and vendors of wall papers and between jobbers and wholesalers thereof, and to unduly enhance the price of wall paper, making it one-half more than the price which it would be if same had been left to free and unrestricted competition." It is further distinctly averred, that by these agreements and contracts aforesaid, the entire wall paper trade throughout the United States passed into the hands of the plaintiff company and that it "threatened defendant that, unless it signed said agreement, 'exhibit 2,' (set out above) no wall paper would be sold to it; that said combination would make it impossible for it to buy wall paper, or to continue its business, and would drive it out of its said business, and compel it to sacrifice the good will owned by it as aforesaid, and the capital invested by it in said business." It is further averred, that the defendant conducted for many years a large business in wall paper at Cincinnati, selling to retailers and consumers in Ohio and other states of the Union. That the defendant finding it impossible to continue business without signing said agreement, shown in exhibit 2, did sign and become a member of said combination. The defendant charges, that under the contract so signed by him, he purchased more than $200,000.00 worth of wall paper and that the prices he was compelled to pay were extortionate and unreasonable and more than 50 per cent. greater than they would have been had competition between wall paper makers not been completely suppressed by the agreements between such manufacturers and said corporation.

LURTON, Circuit Judge, after making the foregoing statement of the case, delivered the opinion of the Court.

It has been urged that the defense to the claim in suit must fail upon either of two grounds: first, that the contract between the plaintiff corporation and the manufacturers of wall paper,
476 does not contain any stipulations beyond those admissible and essential to protect the contracting parties in securing reasonable prices and against unreasonable and demoralizing competition; second, that if it be conceded that the agreement does constitute an unlawful combination in restraint of inter-state trade and commerce, that that fact affords no defense to a suit for the price of goods sold and delivered to the defendant. These in their order. As to the first point, it need only be said that the legality of the contract between the combining companies at common law, as imposing only a reasonable restraint upon the freedom of competition, is not a defense if the dominant purpose of the agreement and the direct result of its operation is to directly, and not incidentally, restrain freedom of commerce between the states or with foreign na-

tions. Until the Supreme Court shall otherwise hold, we feel concluded by the meaning placed upon the act by *United States v. Freight Association,* 166 U. S. 290, *United States v. Joint Traffic Association,* 171 U. S. 505, *Chesapeake and O. Fuel Company v. United States,* 115 F. R. 610, and not departed from in the *Northern Securities Company v. The United States,* 193 U. S. 197, 331. But we think the combination and agreement, shown by "Exhibit I," comes within the prohibition of the Act of Congress, whether that Act be aimed only at unreasonable restraints or not. That contract and agreement is one between 98 per cent. of all the wall paper makers in the United States who coöperate through a corporation organized by them for the single purpose of selling their gross product. That there shall be no competition between the combined companies, is insured by the agreement that each manufacturer shall sell his entire product at an agreed price to the plaintiff corporation, which is to nominally make all sales, either directly or indirectly, at a uniform price subject to an agreed scale of discounts, varying only according to an arbitrary classification of buyers. The difference between the price at which the so called vendors sell to the plaintiff company, and the price exacted from those who buy from it, will be profit, and the profits will constitute the dividends to be distributed to plaintiff's shareholders and plaintiff's shareholders are ex-
477 clusively composed of the combining companies, called vendors; its comparatively insignificant amount of stock being placed with these "vendors" in proportion of their product of the year before the combine took effect. To prevent the enlargement of the product of any one of the "vendors," it is provided, in effect, that there shall be no enlargement of plant, though new machinery may be used to replace old or that destroyed.

To insure a monopoly of the business to themselves and keep strangers out of it, it is alleged, and not denied, that the only two manufacturers of wall paper machinery in the United States became parties to the combination by agreeing to sell no machinery to strangers and to confine their sales to the combine. To add to the protective force of the tariff duties tending to keep out foreign products it is also averred, that an agreement was made with Canadian paper makers to protect each other against any cutting of prices. To insure against any kicking out of the agreement or violations in any way, each member is required to endorse its shares in the Continental Wall Paper Company to that corporation, which is to hold and apply the same as liquidated damages in case of any breach. But that there should be no inducement to fly the contract, the scheme contemplated that every wholesale buyer should engage himself to buy his entire supply from the combine, and to secure the engagement of each such jobber or wholesaler to the scheme, no paper was to be sold to such as did not sign. This made the contract practically unbreakable, for if a factory should weary of the monopoly it could find no jobbers or wholesalers free to buy its product and it would be driven to rely upon such orders as it could get from retailers or consumers.

That this union of former competitors, a union embracing substantially all of the wall paper mills in the land, for the two per cent. left out may be ignored as an active competition, should result in an unreasonable enhancement of prices is precisely what we might anticipate. When the sellers combine, competition is stifled. Wall paper is a product of universal necessity and the consumers are found in every household. Every principle of economic law in-
178 structs us that there will be an enhancement of price, limited only by the unknown boundary of human greed and corporate avarice. It is therefore not to be doubted, but that the averment, confessed by the pleading, that prices have been advanced fifty per cent., is substantially true. The conspiring mills were situated in many states. The consumers embraced the whole citizenship of the United States. The jobbers and wholesalers who were to be coerced into contracts to buy their entire demands from the Continental Wall Paper Company, or be driven out of business, were in every state. Before the combination, each of the combining companies was engaged in both state and inter-state commerce. The freedom of each, with respect to prices and terms, was restrained by the agreement and inter-state commerce directly affected thereby, as well as by the enhancement of prices which resulted. A more complete monopoly in an article of universal use has probably never been brought about. It may be that the wit of man may yet devise a more complete scheme to accomplish the stifling of competition. But none of the shifts resorted to for suppressing freedom of commerce and securing undue prices, shown by the reported cases, is half so complete in its details. None of the schemes with which this may be compared is more certain in results, more widespread in its operation and more evil in its purposes. It must fall within the definition of a "restraint of trade," whether we confine ourselves to the common law interpretation of that term or apply that given to the term as used in the Federal Act by the cases we have cited above.

This brings us to the vital question in the case, which is the bearing of the fact that the plaintiff is but the corporate hand of an illegal combination under the Anti-Trust Law of 1890, upon the liability of the defendants in this action for the price of wall paper bought from the illegal combine. The contention is, that the contract upon which the action is brought, is wholly collateral to any contract between the plaintiff and the other members of the illegal combination. But if the contract to pay for the goods included in the account sued upon, is only part of an entire agreement
179 which includes stipulations which are illegal, the case of the plaintiff must fail. It is elementary law, that the courts will not lend assistance in any way in carrying out an illegal agreement. *McMullen v. Hoffman*, 174 U. S. 639, 654; *Embrey v. Jemison*, 131 U. S. 336, 348. Nor can a plaintiff show only such part of an entire agreement as is legal and sue upon that alone. The whole must come. See cases just cited. If the combination had stopped with the agreement between the manufacturers and the plaintiff, by which the competition between the makers of wall paper had been obviated and a uniform sale price settled, this fact would have been no defense

for the price of goods sold by the illegal combination to a stranger. If the defendants had been injured in their business by such an illegal method of enhancing prices, their only remedy would have been a direct action for damages under Section 7 of the Anti-Trust Act. *Montague & Co. v. Lowry*, 193 U. S. 38; *City of Atlanta v. Chattanooga Foundry and Pipe Works Co.*, 127 F. R. 23; and *Connelly v. Union Sewer Pipe Company*, 184 U. S. 540, 551, 552. If the illegal agreement in restraint of trade had included only a contract between the manufacturers themselves, the defendants and all other jobbers would at least have had the privilege of buying from whom they could best get that which they wanted and the liberty of selling to whomsoever and at such prices as they saw fit. Competition between themselves in buying and selling would be free except in so far as the market was monopolized by the combine between manufacturers. But this might have resulted in conditions threatening to the permanency of the manufacturers' monopoly by offering a strong inducement for strangers to enter the field with new plants and those within the fold to break away. These considerations doubtless led to such an extension of the agreement or combination, as to take in the jobbers and wholesalers. This was easy to do, for the threat to refuse to sell to such as would not come in would inevitably bring them to an agreement. And so the defense avers, that the plan and agreement of the manufacturers, who organized the plaintiff as an instrumentality through which
480 competition between themselves might be stifled, included the bringing into the combination all the jobbers and wholesalers in the United States by identical agreements with each such dealer and the plaintiff, whereby the contracting jobbers should agree to buy exclusively from the plaintiff or other members of the combine and to sell only according to a schedule of prices and terms of credit dictated by the plaintiff. It is also averred and admitted by the demurrer, that this purpose was carried out and identical agreements obtained with all jobbers and wholesalers. The form of all such contracts with jobbers has been set out as "Exhibit 2" in the statement of this case. Under threat that they must sign this jobbers' agreement or be driven out of business, the defendants signed and this is an action for goods sold upon the terms and prices settled by that contract. That contract provides, among other things, that the jobbers shall deal only with the plaintiff. The form in which this agreement is stated, is to buy his demand up to a certain sum inserted by the plaintiff and only the excess over that from other sources of supply. But that form of putting the agreement is but a shallow blind, intended only to deceive. The amount inserted to fill the blank is, as averred, always twice as much, or more, than the gross purchases of the preceding year. This leaves no probability of any demand over the sum inserted.

With reference to the jobber's liberty of sale, it is provided:

"Third. Attached hereto marked "B" is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers and also a statement of discounts allowed to such customers other than jobbers for quantity

purchases, together with the terms of credit, and freight allowance to which such customers are entitled.

"It is an essential condition of this agreement that the jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in schedule "B," the intent hereof being to assure the company against the use by the jobbers of this agreement to undersell the company.

481 "The prompt performance by the jobber of the provisions of this agreement as to payment and otherwise is a condition precedent to exacting the continuous performance of said agreement by the company."

Schedules "A" and "B," referred to in the jobbers' agreement, are schedules "B" and "C" of the manufacturers' agreement. But the essential entirety of the agreement between the so called vendors and the plaintiff and that between the plaintiff and the defendants and all other jobbers, and the necessity the plaintiff is under to found its right of action upon the entire agreement, is illustrated by the company's attitude as plaintiff. It does not make a roll of paper. The mill owners continued to operate their respective mills and to take and fill orders after as before the combine. But by "Exhibit 1," all sales to "jobbers" were to be in the name and on account of the plaintiff and the price collected by the plaintiff. As the contract suggestively puts it, "the vendor shall have the right to select the jobbers through whom the goods manufactured by it are to be distributed, and to designate the amount of its goods such jobbers may buy." Thus the petition or declaration in this case, is upon an account which shows purchases by the defendants from many different members of the combine and the amount bought from each. But the plaintiff sues for the aggregate balance due upon the several purchases. This action it seeks to maintain, not upon any averment of an assignment by the several vendors to it, but as upon an account with it and not the vendors. These and other considerations lead us to the conclusion that the several agreements we have referred to, constitute one whole, and that the general purpose and design, and the undoubted result, is to establish an illegal combination of manufacturers and wholesale dealers in restraint of trade—state and interstate.

The jobbers who have signed the particular contract essential to secure their co-operation are, in a sense, victims, for they have been coerced into agreement. Nevertheless, they are also members of the illegal combination and active participants in the scheme for the illegal enhancement of prices, the stifling of competition and

482 the restraint of freedom of trade and commerce. The jobbers do not share in the benefits which result to the manufacturers from the stifling of competition between themselves and the enhancement of prices thereby resulting. By that the jobbers are victimized. But the jobbers do share in the benefits growing out of the destruction of competition in prices as between themselves. The enhanced prices which they pay is exacted again from retailers. The consumer, at last, is the only real victim. It is the consumer who makes

up the public which it is the object of the law to protect against undue exactions through illegal combinations in restraint of freedom of commerce and fair play in commercial transactions.

The defense which we sustain here is not for the sake of William Voight and Sons. The averment that they paid 50 per cent. more for their gross purchases in consequence of the illegal combination, has little merit in it, moral or otherwise. They doubtless sold again at the great minimum profit they agreed to exact from retailers and the retailers later exacted the undue profit from the consuming public. There at last, like all burdens, it must rest. The defense here sustained is good only because it is only possible to protect the public by refusing all assistance in carrying out an illegal agreement.

This is the policy of our law, and to maintain this policy the judgment of the Circuit Court must be affirmed.

483 United States Circuit Court of Appeals for the Sixth Circuit.

I, Frank O. Loveland, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the case of Continental Wall Paper Company *vs.* Lewis Voight and Sons Company No. 1509, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this eighth day of January A. D. 1907.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the Sixth Circuit.

484 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Continental Wall Paper Company is plaintiff in error and The Lewis Voight and Sons Company is defendant in error which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the Southern District of Ohio, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the
485 Supreme Court of the United States, Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said

Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of February, in the year of our Lord one thousand nine hundred and seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

United States Circuit Court of Appeals, Sixth Circuit, *ss:*

In pursuance of the command of the foregoing writ of certiorari I now hereby certify that on the 6th day of March, 1907 there was filed in my office a stipulation in the above entitled case in the following words, to-wit:

"United States Circuit Court of Appeals for the Sixth Circuit.

CONTINENTAL WALL PAPER COMPANY, Plaintiff in Error,
against
THE LEWIS VOIGHT & SONS COMPANY, Defendant in Error.

The Supreme Court of the United States having heretofore granted a writ of certiorari in the above entitled cause, it is hereby stipulated and agreed by and between the solicitors for the respective parties hereto, that the certified transcript of record in this cause now on file in the office of the Clerk of the Supreme Court of the United States may be taken as a return to the aforesaid writ of certiorari.

Dated March 6th, 1907.

GUGGENHEIMER, UNTERMYER & MARSHALL,
JOSEPH WILBY,
Solicitors for Plaintiff in Error.
ORRIS P. COBB,
MORRISON R. WAITE,
Solicitors for Defendant in Error."

I further certify that the above is a true and correct copy of said stipulation and of the whole thereof.

Witness my signature and the Seal of the said United States Circuit Court of Appeals at the City of Cincinnati in said Circuit this sixth day of March A. D. 1907.

[Seal United States Circuit Court of Appeals, Sixth Circuit.]

FRANK O. LOVELAND,
Clerk United States Circuit Court of Appeals for the Sixth Circuit.

486 [Endorsed:] File No. 20,547. Supreme Court of the United States. No. 212, October term, 1907. Continental Wall Paper Co. *vs.* The Lewis Voight & Sons Company. Writ of certiorari and return. Filed March 8, 1907.

15

Supreme Court of the United States,

OCTOBER TERM, 1906.

[redacted]

Office Supreme Court, U.
FILED.
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JAMES H. McKENNEY
CLERK

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

against

THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

Notice and Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

LOUIS MARSHALL,
JOSEPH WILBY,
Petitioner's Counsel.

B. H. TYRREL, PRINTER, 206-208 FULTON STREET, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1906.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

against

THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

No. 582.

Gentlemen.—Please take notice that the above named petitioner, Continental Wall Paper Company, will present the annexed petition, together with the record in this cause, at a session of the Supreme Court of the United States to be held at the Capitol in the City of Washington, D. C., on Monday, the fourth day of February, 1907, at twelve o'clock noon, or as soon thereafter as counsel can be heard, and will then and there apply to the Court and ask that a writ of certiorari may be issued directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding the said Court to certify and send to the Supreme Court of the United States, on a day to be desig-

nated, a full and complete transcript of the record and all proceedings of said Court in the cause therein entitled Continental Wall Paper Company, plaintiff in error, against The Lewis Voight & Sons Company, defendant in error, which is No. 1509, on the docket of said Court, and for such other and further relief in the premises as to the Court may seem just and proper.

Dated, New York, January 18, 1907.

LOUIS MARSHALL,
Solicitor for Petitioner.

To MESSRS. ORRIS P. COBB and
MORRISON R. WAITE,
Respondent's Solicitors
and Counsel.

Service of the foregoing notice and of the petition for writ of certiorari herein is hereby admitted.

Dated at Cincinnati, Ohio, January 21, 1907.

ORRIS P. COBB,
COBB, HOWARD & BAILEY,
MORRISON R. WAITE,
Solicitors for Respondent.

SUPREME COURT OF THE UNITED STATES, 7

OCTOBER TERM, 1906.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

against

THE LEWIS VOIGHT & SONS COMPANY,
Respondent. 8

No. 582.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SIXTH CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Continental Wall Paper Company, a corporation duly organized under the Laws of the State of New York, and a citizen of 9 said State, respectfully shows:

I.—On February 24, 1900, your petitioner brought an action against the respondent in the United States Circuit Court for the Southern District of Ohio, Western Division, to recover the sum of Fifty-seven thousand seven hundred and sixty-two and 10/100 Dollars ($57,762.10), with interest thereon from July 29, 1899, as the pur-

chase price for goods sold and delivered by the petitioner to the defendant. In due time the respondent interposed an amended answer, setting up a number of special defences and counterclaims. The petitioner interposed demurrers to the second, third, fourth and fifth defences and to the first and second counterclaims and cross-petitions embodied in the amended answer, and replied to the sixth defence and to the third counterclaim and cross-petition of the respondent. The demurrers were argued before his Honor Judge Thompson about February, 1902, and on May 27, 1905, a decision was rendered by which all of the petitioner's demurrers were sustained, except that which was interposed to the third defence, which was adjudged to be sufficient, and since the logical effect of such decision was to defeat a recovery on the part of the petitioner, a judgment dismissing the complaint followed.

II.—The petitioner thereupon sued out a writ of error to the United States Circuit Court of Appeals for the Sixth Circuit, upon which argument was had beginning on November 7, 1906, and thereafter and on December 4, 1906, a decision was rendered by said Court affirming the judgment of the Circuit Court.

The mandate of said Court has not as yet been issued, and said cause is still pending in said United States Circuit Court of Appeals, on whose docket it appears as No. 1509.

III.—The third defence set forth in the answer, which has been sustained, in substance alleges that a number of firms, corporations and individuals engaged in the business of manufacturing wall

paper, and producing upwards of ninety-eight per cent of all the wall paper manufactured and sold in the States and Territories of the United States, organized the plaintiff as a corporation under the Laws of the State of New York, for the purpose of creating restrictions in trade and commerce, limiting the production of wall paper, increasing the price thereof, and preventing competition in the manufacture and sale of the article; that after having formed said corporation, contracts were entered into between the Continental Wall Paper Company, the petitioner, and the several manufacturers of wall paper, whereby the latter sold to the former all of their output on terms specified in the agreements which are referred to in the answer, and that pursuant to such agreements the plaintiff undertook to control the prices at which wall paper was to be sold, and entered into contracts with various jobbers doing business in the United States, whereby the latter agreed that they would not directly or indirectly sell or offer for sale any of the merchandise purchased from the plaintiff at lower prices or on better or more favorable terms than those specified in the contracts between them. 13 14

It is alleged that the defendant was such a jobber, and that the merchandise for which the petitioner seeks to recover was sold to it as such jobber by the petitioner, under the terms of such contract. 15

It is not pretended that the defendant was the manufacturer of wall paper; nor that it entered into any contract with the petitioner whereby the latter undertook to handle any product controlled by the defendant; nor that the defendant's dealings with the petitioner were in any other capac-

16 ity than that of customer. Those relations were governed by a contract which is set forth in the answer, by the terms of which certain privileges were afforded by the petitioner to the defendant.

Every allegation of the answer indicates that the gravamen of the defence sought to be interposed was, that the petitioner was a trust and that the defendant was its victim. As indicating that fact, the following analysis of the third defence is presented:

The third defence alleges that the defendant has been for ten years last past, and was at the time stated in the petition, and is now, engaged in
17 the business of buying, selling and dealing generally throughout the State of Ohio and elsewhere in wall paper of all kinds (Rec., p. 396); that the business of the defendant has consisted of what is generally known as that of a jobber or "wholesaler," that is to say, the defendant at the beginning of each season has bought from those engaged in the manufacture of wall paper merchandise in wholesale lots and has resold the same from time to time to retail dealers (Rec., p. 396).

It is then alleged that on July 1, 1898, the National Wall Paper Company was the owner of certain specified factories for the manufacture of
18 wall paper (Rec., pp. 396, 397), and that other designated firms and corporations, not including the defendant, were engaged in the manufacture of wall paper and the sale of their product at various places designated (Rec., pp. 396-398). It was then alleged that these persons, firms and corporations, "Contriving and intending and conspiring with each other to form a combination and trust by which to limit the production of wall paper in the United States and also to enhance

the price thereof to the jobbers, the wholesalers, 19
the retailers and the consumers of wall paper * * * agreed with each other that, while said corporations and persons should retain the ownership of their several plants and businesses * * * the control of said several businesses, and all matters relating to and affecting the production of said several establishments and the prices and sale of wall paper manufactured thereby, should be placed under the control of a committee to be appointed by said several corporations and firms * * * that said committee should adopt rules and regulations governing the manner of conducting the business of all such persons, firms 20
and corporations * * * to fix and determine list prices, discounts, terms of sale, equalization of freight rates, and all other matters affecting the production and regulation of prices and the classification of the dealers in wall paper in the United States; and the prices at which the wall paper should be sold to and by such several classes" (Rec., pp. 398, 399).

It is then alleged that contriving, intending and conspiring together, with intent to disguise the real agreement, and to defeat and evade the law and the provisions of the statutes of the several states, and of the United States, it was further 21
agreed that, for the more effectual carrying out of said agreement, a corporation should be ostensibly formed under the laws of the State of New York, to be called the Continental Wall Paper Company, being the plaintiff herein, with a capital stock of $200,000 (Rec., pp. 399, 400).

The terms of the agreement entered into between the various firms and corporations forming the Continental Wall Paper Company is then set forth (Rec., p. 399):

"For the purpose and with the intentions aforesaid, it was further agreed that said the Continental Wall Paper Company should, in some form so as to disguise the real nature of the transaction, compel all dealers in wall paper, whether jobbers or wholesalers, to sign an agreement obligating the jobbers or wholesalers to buy from no one but said members of said combination and trust, and at the prices fixed in Schedule B attached to said Exhibit 1, and likewise an agreement by such jobbers not to sell goods to dealers other than jobbers at lower prices or upon better or more favorable terms than those shown in the Schedule C attached to said Exhibit 1, under the penalty that if they refused so to do, no wall paper should be sold to such jobber by any of said corporations or firms, and that, thereby, such jobbers should be driven out of business" (Rec., p. 400).

It is then alleged that in pursuance of said agreement the plaintiff was nominally incorporated with the stock aforesaid, and the said contracts were signed by the National Wall Paper Company, and said persons and corporations, being, at once, subscription for stock by said so-called vendors, and the acceptance of such subscription by the said Continental Wall Paper Company, and by it, nominally, each so-called vendor sold unto the company, and the latter agreed to purchase the entire product of wall paper manufactured by each of said vendors for the period from July 20, 1898, to the first day of July, 1899; that said contract further fixed prices at which the merchandise should be nominally sold to the Company, and further nominally provided that the goods pretended to be acquired by the Company from the so-called vendor, should be sold by the Company for the account of the Company, and

that the goods acquired which should be sold to wholesalers other than jobbers, should be sold by the vendor for the account of the Company (Rec., pp. 400, 401). 25

It is then alleged that the schedules attached to said agrement contained a list of prices for all commodities in the wall paper line, which were called "List" or "Road Prices," and that said contract provided that sales made to jobbers should be made at discounts from said List or Road prices fixed in the schedule marked "B" annexed to said Exhibit 1 (Rec., pp. 401, 402).

The various terms of the contract between the so-called vendors and the company are then set forth (Rec., pp. 402-405). The answer then alleges (Rec., p. 405). 26

"It was further a part of said agreement, though not reduced to writing, save as is set forth in said exhibit, that all jobbers and other wholesalers of wall paper should be forced to sign an agreement binding themselves to purchase their entire stock of wall paper nominally either from plaintiff or from said corporations or firms at prices fixed in said Exhibit 1, and that they should only sell at prices fixed in the Schedules attached to said Exhibit 1, under the penalty, which the combination of all of said corporations and firms enabled them to enforce, that such jobbers or wholesalers, in case of refusal to accede to the terms so imposed, or in case of violation thereof, should be unable to buy wall paper, should be driven out of business, and should sacrifice the goodwill and capital therein invested." 27

On page 406 it is alleged:

"In the further carrying out of said scheme to stifle competition, etc., * * * it was further agreed between the members of said combination

and trust that the so-called directors of plaintiff, being really a committee appointed as aforesaid by the said members of said trust or combination, should arbitrarily classify the wholesale dealers of wall paper in the United States and territories thereof, into two classes, namely, jobbers and road or quantity buyers; that they should further arbitrarily classify the jobbers into 'First Class' and 'Second Class' and 'Third Class' jobbers; that they should further arbitrarily classify the other wholesalers into 'Road' or 'Quantity Buyers,' and 'Special Buyers;' that being thus classified they should all be compelled to sign written agreements, nominally with said company, really with said members of said combination or trust, obligating them to buy their entire stock of merchandise from said company. A copy of said agreement so to be signed by said jobbers is attached hereto, marked Exhibit 2, and made a part hereof."

On page 406 it is alleged:

"To conceal the fact that it was an agreement to purchase from no one but said company, and the members of said combination and trust, the amount of purchases made by the buyer, in the previous year, from all the members of said combination or trust, being the entire amount of purchases made by such buyer during the preceding year, was ascertained, and an amount at least double thereof, * * * was inserted in said blank as the amount to be purchased by such buyer from the Company. By said agreement the prices to be paid by the jobber were fixed according to the class in which he was arbitrarily placed at prices enumerated in Schedule B attached to said Exhibit 1 and the prices at which alone said jobber could sell, was fixed as shown by Schedule C attached to said Exhibit 1."

On page 407 it is alleged:

"The members of said combination and trust, and said plaintiff, further to carry out said agreement, compelled all other wholesale and quantity buyers to sign agreements in the form attached to this answer, marked Exhibit 3."

It is then alleged on page 407:

"On, before and after said first day of July, 1898, this defendant had a large and profitable business of long standing, possessing a valuable good-will, and in which they had a large capital invested, being what is generally called the business of a jobber or wholesaler of wall paper in the State of Ohio and throughout the States and territories of the United States. The defendant and all other persons engaged in the wholesale wall paper business at the beginning of each season, which commenced in September and closed the first of July, following, according to the custom of the trade, bought from the various persons engaged in the manufacture and sale of wall paper in the United States, being the persons, members of said combination and monopoly, their stock of wall paper. * * * At said time said members of said combination and trust having, by the agreements and acts aforesaid, obtained the control of the wall paper trade throughout the United States, at once greatly advanced the price of said wall paper and threatened defendant that unless it signed said agreement, Exhibit 2, no wall paper would be sold to it; that said combination would make it impossible for it to buy wall paper, or to continue its business, and compel it sacrifice the good will owned by it as afores , and the capital invested by it in said business."

The answer then continues, page 408:

"Said *combination or trust* then and from that time thereafter, until the first day of July, 1900, had the power, by means of said *combination and*

34 *said agreements,* and the will, to carry out its said threats, and deprive these defendants or any person, firm or corporation engaged in the business of selling wall paper in the United States of the power to obtain wall paper for its or their trade, and the will and the power to drive out of business any person, firm or corporation engaged in the business of selling wall paper, deprive them of their good will, and compel them to sacrifice the capital invested in the business. In like manner, by the same means, all other jobbers and wholesalers of wall paper in the United States, and all persons engaged in commerce in the wall paper trade between the several States of the Union and foreign countries, were compelled to and did sign the agreements attached to this answer as Exhib-
35 its 2 and 3.

"The immediate, intended and direct effect of the said combination and agreements was the stifling of competition between said manufacturers and vendors of wall paper, and between the jobbers and wholesalers thereof, and to unduly enhance the price of wall paper.

"After the making of said agreements, as before, the members of said *combination* solicited and received orders from this defendant and all other wholesalers, filled their orders; * * * said *combination* contrived, intended and did prevent free and unrestricted competition between the producers and between the purchasers of wall paper, and between the jobbers and wholesalers
36 of wall paper throughout the United States." (Rec., p. 409.)

On page 409 it is alleged:

"Defendant avers that said plaintiff, and the members of said combination as aforesaid, combined capital and skill for each and all of the following purposes, to wit. * * *"

Then follows an enumeration of the alleged unlawful purposes.

Then follows the conclusion, page 410:

37 "Said contracts and agreements were each and all combinations and conspiracies in restraint of trade and commerce between the said several states and with foreign nations * * * and by said contracts, and the acts done by the members thereof and by said plaintiff under and in pursuance thereof, said plaintiff and the said members of said combination or trust did monopolize and attempt to monopolize the trade and commerce in wall paper among the several states and with foreign nations."

On page 410 it is alleged:

38 "These defendants aver that the prices charged in said Exhibit attached to said amended petition, are the prices fixed and determined in pursuance of and by the combination or trust agreement, as above set forth, and are unreasonable, unjust and excessive."

The third defence concludes with the allegation:

"Each and all of the provisions of said contract and agreement between said members of said combination and each other; between said so-called vendors and said plaintiff; between said members of said combination and said plaintiff, and the so-called jobbers; between the members 39 of said combination and trust and said plaintiff and the so-called 'Road' or 'Quantity Buyers,' are each and all contrary to the provisions of the statutes, etc." (Rec., p. 411).

We have thus with great detail sought to analyze the answer. Stripping it of all verbiage and of its epithetal allegations, and of the conclusions drawn and characterizations indulged in, it amounts simply to this:

40 *First.*—Various manufacturers of wall paper, among whom the defendant is *not* included because it was not a manufacturer but a jobber, combined together for the purpose of forming the Continental Wall Paper Company and of controlling the production and sale of wall paper thereby.

Second.—For the purpose of carrying out their plan they entered into agreements with each other regulating the manner in which their product was to be handled, the prices and terms on which such product was to be sold, the persons, firms
41 and corporations to whom wall paper would be sold, and the conditions of such sale.

Third.—That the persons thus organizing the Continental Wall Paper Company intended to violate various statutes, to monopolize the manufacture of wall paper, to enhance the prices thereof, and to do other unlawful acts.

Fourth.—That the defendant, who was a jobber and wholesaler to whom the combination expected to sell wall paper, was compelled by the combination to purchase the wall paper which
42 the defendant required upon the terms fixed and established by the combination, and was forced and compelled to execute an agreement specifying the terms on which such purchases were to be made and the conditions on which the goods so purchased were to be dealt in.

IV.—The contract between the petitioner and the defendant (Rec., pp. 433, 434) is not set forth in the complaint, but is pleaded in the answer.

The defendant predicates its defence upon the third paragraph. The first paragraph is an agreement by the company to sell and the jobber to purchase his entire requirements of wall paper for the business year ending July 1, 1899, to an amount specified, the jobber reserving to himself the right to purchase such merchandise as he may need in excess of the sum specified from others. The company was to deliver the goods f. o. b. at New York or Philadelphia. 43

By the second paragraph the jobber was allowed discounts at rates shown in accompanying schedule, and the terms of payment were specified. 44

The third paragraph reads as follows:

"*Third.*—Attached hereto marked 'B' is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers and also a statement of discounts allowed to such customers other than jobbers for quantity purchases, together with the terms of credit, and freight allowance to which such customers are entitled.

"It is an essential condition of this agreement that the jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in Schedule 'B,' the intent hereof being to assure the company against the use by the jobbers of this agreement to undersell the company. 45

"The prompt performance by the jobber of the provisions of this agreement as to payment and otherwise is a condition precedent to exacting the continuous performance of said agreement by the company."

46 V.—Upon these facts, it has been adjudged that the transactions between the petitioner and the defendant involved an illegal restraint of trade, and that the petitioner was therefore debarred from recovering from the defendant for the goods which the latter received from the former.

VI.—It is thus apparent, that the questions involved in this suit are of great public importance. It involves an important principle in commercial law which is far reaching in its operation. It likewise involves an interpretation of the act of
47 Congress of July 2, 1890, known as the Sherman Anti-Trust Law, and the scope to be given to the decision of this Court in Connolly *v.* Union Sewer Pipe Co., 184 U. S., 540, and in Cincinnati Packet Co. *v.* Bay, 200 U. S., 179, 185. Among the questions which are involved, the following may be stated:

(1) Whether the contract between the petitioner and the defendant involves such a restraint of trade as comes within the scope of the Sherman Anti-Trust Law.

48 (2) Whether, assuming that the transactions referred to in the third defence involve a restraint of trade, it was a reasonable or unreasonable restraint, and if reasonable, whether it was a violation of the Sherman Anti-Trust act.

This brings up the question as to whether, in view of the opinion of Mr. Justice Brewer in Northern Securities Co. *v.* United States, 193 U. S., 360, the question decided in United States *v.* Freight Association, 166 U. S., 290, is still an open one.

(3) Whether, assuming that the organization of the petitioner was for the purpose of restraining competition and enhancing prices, the defendant has a defence under common law considerations, to the action brought against it to recover for goods sold and delivered. 49

On this point, attention is called to the following decisions:

Connolly *v.* Union Sewer Pipe Co., 184 U. S., 540.
Strait *v.* National Harrow Co., 51 Fed. Rep., 819.
National Distilling Co. *v.* Cream City Importing Co., 86 Wis., 352. 50
Dennehy *v.* McNulta, 86 Fed. Rep., 825.

(4) Whether, assuming that the petitioner was a trust and could be lawfully proceeded against under the Sherman Anti-Trust Law, that act prevented the petitioner from recovering for the goods which it sold and delivered to the defendant.

On this proposition attention is called to the decisions in

Connolly *v.* Union Sewer Pipe Co., 184 U. S., 540. 51
The Charles E. Wisewall, 74 Fed. Rep., 802; affd. 86 Fed. Rep., 671.
Dickerman *v.* Northern Trust Co., 176 U. S., 195.

(5) Whether the contract between the petitioner and the defendant was one in restraint of trade, or whether any of its provisions would debar the

52 plaintiff from recovering for goods sold and delivered to the defendant.

On this proposition the attention of the Court is called to the substantial identity between the contract in this case and that which appears in the record in Connolly *v.* Union Sewer Pipe Co. *supra*), and as to its validity calls attention to the opinions in

United States *v.* Addystone Pipe & Steel Co., 85 Fed. Rep., 271.
American Strawboard Co. *v.* Haldeman Paper Co., 83 Fed. Rep., 619.
Hitchcock *v.* Anthony, 83 Fed. Rep.,
53 779.
Navigation Co. *v.* Windsor, 20 Wall., 64.
Dunlop *v.* Gregory, 10 N. Y., 241.
Hodge *v.* Sloan, 107 N. Y., 244.
Bement *v.* National Harrow Co., 186 U. S., 70.
Walsh *v.* Dwight, 40 App. Div., 513.
Park & Sons Co. *v.* National Wholesale Druggists Assn., 175 N. Y., 1.
Hartman *v.* John D. Park Sons Co., 154 Fed. Rep., 358.
Whitwell *v.* Continental Tobacco
54 Co., 125 Fed. Rep., 454.

(6) Whether, assuming that the clause contained in the contract between the petitioner and the defendant, which prohibited the latter from selling any of the merchandise purchased from the former at lower prices than those specified in the schedule, was illegal, the only effect of such illegality would have been to nullify that provision, and not to prevent the petitioner from recovering for

merchandise actually received and kept by the defendant. 55

As bearing upon this important feature of the case, attention is called to the following authorities:

Hammon on Contracts, § 251.
Oregon Steam Navigation Co. *v.* Winsor, 20 Wall., 64.
Cincinnati Packet Co. *v.* Bay, 200 U. S., 179, 185.
Western Union Telegraph Co. *v.* Burlington & Southwestern Ry. Co., 11 Fed. Rep., 1.
Erie Railway Co. *v.* Union Locomotive & Express Co., 35 N. J. Law., 240. 56
Stewart *v.* Lehigh Valley R. R. Co., 38 N. J. Law., 505.

VII.—Your petitioner further alleges, on information and belief, that not only is the determination of these questions important in the present case, but the petitioner has other suits pending, involving large sums of money, the outcome of which is dependent upon the decision herein, and if the decisions thus far rendered should stand, the vendors of merchandise to the extent of millions of dollars would be precluded from recovering for goods sold and delivered, since a multitude of business transactions, involving practically the same method as that which is disclosed by the record herein, have taken place, all of which are subject to the same defence as that which has been sustained herein. 57

VIII.—This Honorable Court is therefore asked, to undertake the determination of these

questions, so as to insure an authoritative decision with regard thereto, to the end that a settlement of these questions of law, which are both novel and important, may be accomplished.

IX.—Your petitioner believes that the judgment of the Circuit Court of Appeals of which complaint is made, is erroneous, and that this Honorable Court should require this cause to be certified to it for its review and determination in accordance with the provisions of the Acts of Congress in such cases made and provided.

WHEREFORE your petitioner prays that a writ of certiorari may issue out of and under the seal of this Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding the said Court to certify and send to this Honorable Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said cause therein, entitled "Continental Wall Paper Company *v.* The Lewis Voight & Sons Company," No. 1509 on the docket of said Court, to the end that the said cause may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress entitled "An Act to establish Circuit Courts of Appeal, and define and regulate in certain cases the jurisdiction of the Courts of the United States, and for other purposes," approved March 3, 1891, or that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem proper and in conformity with the said act. And your petitioner will ever pray.

CONTINENTAL WALL PAPER COMPANY,
By
LOUIS MARSHALL,
Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
County of New York,

61

LOUIS MARSHALL, being first duly sworn, deposes and says: I am the solicitor and counsel for the Continental Wall Paper Company, the petitioner herein; I have read the foregoing petition for a writ of certiorari and know the contents thereof, and the same is true to my own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true

LOUIS MARSHALL. 62

Subscribed and sworn to before me
this 18th day of January, 1907.

EDWARD M. NEARY,
(SEAL.) Notary Public, Kings Co.

Certificate filed in New York Co.

63

No. [redacted]

FEB 4 1907

JAMES H. McKENNEY,

Supreme Court of the United States.

OCTOBER TERM, 1906.

[redacted]

vs.

[redacted]

Answer of Respondent to the Petition for Writ of Certiorari.

Brief in Opposition to said Petition.

[redacted]

[redacted]

Supreme Court of the United States.

OCTOBER TERM, 1906.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

vs.

THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

Answer of Respondent to the Petition for Writ of Certiorari.

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

The respondent herein, the Lewis Voight & Sons Company, a corporation duly organized and existing under the laws of the state of Ohio, and a citizen of said state, for its answer to the petition herein, respectfully submits:

I.

The petitioner, by these proceedings, seeks to reverse a judgment entered in the Circuit Court of the United States, Southern District of Ohio (Rec., p. 454), and recently af-

firmed by the United States Circuit Court of Appeals for the Sixth Circuit, which judgment dismissed the petition of the plaintiff below, who is the petitioner here, at its costs. This action in the Circuit Court followed the overruling of the demurrer of the plaintiff to the third defense in defendant's amended answer, and was based upon the election of the plaintiff not to plead further. The demurrer and the action of the plaintiff in electing not to plead further, are confessions of the truth of the facts alleged in said third defense.

II.

This third defense to the amended answer (Rec., pp. 396-411) sets forth various facts showing the formation in 1898 of a trust or unlawful combination in the wall paper business in the United States, to which ninety-eight per cent. of the manufacturers of wall paper, the plaintiff, all the manufacturers of wall paper machinery, and *all the wholesalers, jobbers and quantity buyers, including the defendant, were parties under various agreements and contracts*, which agreements and contracts were contrary to public policy and void:

(*a*) At common law;

(*b*) Under the laws of the state of New York where the agreements were entered into and the contracts signed;

(*c*) Under the laws of the state of Ohio where they were to be carried out in part and the goods delivered, and thereafter to be sold for delivery in various states;

(*d*) And under the Act of Congress commonly known as the "Sherman Act";

And further that the suit in form on an account set forth in the petition as amended was an attempt to enforce said illegal trust agreements.

A reading of the third defense is necessary to an understanding of the position of the defendant.

In brief the facts alleged in this third defense and admitted by the plaintiff to be true and which show the existence of this illegal combination are these:

Prior to 1898 there were in existence in the United States some thirty-five factories manufacturing wall paper, controlling upwards of ninety-eight per cent. of the business of the country in that commodity (Rec., p. 398). Seventeen of them were owned by the National Wall Paper Company and eighteen by independent firms, individuals or corporations. They were located in seven states: New York, Pennsylvania, Massachusetts, New Jersey, Maryland, Delaware and Ohio. They were in free and unrestricted competition with each other. There were two manufacturers of wall paper machinery: one, located in New Jersey, the other in Wisconsin (Rec., p. 404). There were wholesale dealers like the defendant, and retail dealers scattered all over the country. The defendant was such a jobber or wholesale dealer, at Cincinnati, and sold goods through Ohio, Kentucky, Indiana and Illinois and other states (Rec., p. 407).

In July, 1898, the scheme was devised to unite all the manufacturers and wholesalers and jobbers of wall paper and manufacturers of wall paper machinery in a combination to control this business. The retailers and consumers were alone left out.

The manufacturers agreed with one another that, while they should retain the ownership of their several plants and businesses and preserve their separate identities and operate said several manufactories and businesses as before, the control of said several businesses in all matters relating to and affecting the productions of said establishments and the prices and

sale of wall paper should be placed under the control of a committee, which would adopt regulations and rules governing the manner of conducting the business of all the said manufacturers, including the fixing of prices and the division of the profits (Rec., pp.398-399).

In carrying this agreement into effect the following plan was devised (Rec., pp. 398, 399): The plaintiff corporation was to be organized under the laws of New York with a capital stock of $200,000, divided into 16,000 shares of $12.50 each, for the ostensible purpose of taking the entire output of wall paper to be manufacured. The stock was to be divided among the manufacturers in proportion to the number of rolls of paper manufactured by them the preceding year. It was to be paid for in cash and immediately indorsed in blank and deposited with the plaintiff (Rec., pp. 399, 404, 420, 423). As the National Wall Paper Company controlled about one-half of the business it was to name three directors of the company and the other manufacturers another three, and these six were to choose a seventh, a sort of umpire (Rec., p. 400). Then a contract (Ex. 1—Rec., p. 419) was to be entered into between each of the manufacturers and the corporation so organized, viz., the plaintiff. Another contract (Ex. 2—Rec., p. 433) was to be entered into between the plaintiff and each jobber of which three classes, known as "First," "Second" and "Third" Class Jobbers were to be formed (Rec., p. 406). The plaintiff under the terms of the written agreement was to sell the goods to the jobber. A third contract (Ex. 3—Rec., p. 447) was to be entered into between each manufacturer and any other purchaser of wall paper in large quantities, known as a "quantity buyer" (Rec., p. 407).

The manufacturers under the terms of said written agreement were to sell the wall paper to the "quantity buyers" for the account of the plaintiff. All other purchasers of wall paper were to buy their goods at certain fixed prices, known as "list prices," and all the manufacturers, jobbers and "quantity buyers" were to agree with the plaintiff not to sell any wall paper to any one at less that such "list prices." These list prices were embodied in and made part of the contracts and are the same in each (See Exhibits 1, 2, 3,—Rec., pp. 427, 430, 435, 441, 447).

All wholesalers and jobbers were also to be compelled to agree to buy from no one but the manufacturers of wall paper who were parties to the scheme, which agreement was to be in some form that would disguise the real nature of the transaction (Rec., p. 400).

In order to secure the faithful performance of these agreements and to prevent their violation by any member of the combination, whether in his capacity as manufacturer, jobber or quantity buyer, the following devices were adopted:

"Good faith" was to be secured on the part of the manufacturers by their furnishing statements and invoices of sales to the company and permitting the latter to audit their books (Rec., pp. 402, 403, 422), and further by their paying into the treasury of the plaintiff $200,000 as subscriptions for stock and at the same time depositing their stock with the company to be taken as liquidated damages in case of any violation of their contracts (Rec., pp. 404, 420, 423). Since the contracts were illegal neither party to them could ever recover upon them, and the manufacturers could neither get back their stock nor their money if they violated the terms of their contract. Again, "good faith" was further to be secured on the part of the manufacturers by removing all

temptation to violate the agreement, because of the tying up of the wholesale trade by agreements compelling them to buy only from those in the combination. A manufacturer, violating the terms of his agreement, would find no market for his product.

The same "good faith" was to be secured on the part of the jobbers and quantity buyers by refusing to let them have any paper from practically the only sources in the country whence it could be procured, if they bought paper from any one else or sold what they bought at any time at less than list prices (Rec., pp. 400, 405, 406, 434, 447).

To make sure that no other persons could manufacture wall paper, all makers of wall paper machinery agreed not to sell such machinery to any one but the plaintiff and the manufacturers who were in the combination (Rec., pp. 404, 405); and to prevent the manufacturers from increasing their capacity, and thus exposing themselves to the temptation of selling their product at less than list prices, they agreed not to run their factories longer than ten hours a day and to put in no machinery except to replace old machines which were discarded (Rec., pp. 404, 422, 423). Competition and cutting of prices in the United States by Canadian members of the trade were also prevented by appropriate agreements (Rec., p. 407).

Nominally the plaintiff was to buy the entire product of all the factories at prices which were the estimated cost of manufacture and incidental expenses (Rec., pp. 401, 420). All contracts with and collections from jobbers were to be in the plaintiff's name, but the contracts with and collections from quantity buyers and other purchasers were to be attended to by the manufacturers (Rec., pp. 401, 420, 421).

In reality the agreement was, and so the business was carried on, that the manufacturers should maintain sample rooms and selling agents and solicit and receive orders from all wholesalers, whether jobbers or quantity buyers; that the entire business should be done by the manufacturers but payments should be made by the jobbers to the so-called company, the plaintiff (which was designated in the written agreement as "selling agent," Rec., p. 419), and by wholesalers, other than jobbers, directly to the manufacturers (Rec., pp. 402, 408).

Blank forms of contract for the different members were prepared and agreed upon and the prices fixed (Rec., pp. 400, 406-407). The combination was to last one year with privilege of two renewals for one year each under certain conditions (Rec., pp. 404, 420).

The plaintiff was to have general supervision of the business of each manufacturer, with the right to examine its books and establish a general system of accounting (Rec., pp. 403, 422). All invoices of sales were to be furnished and accounted for to the plaintiff (Rec., p. 402). The profits of the manufacturers were to be divided in the form of dividends on the stock based upon capacity and without reference to actual sales made by any manufacturer (Rec., p. 401). The profits of the jobbers were the difference between the list prices and the discounts allowed.

The foregoing scheme was completely carried out. Pursuant to said agreement the defendant and every other jobber and wholesaler of wall paper in the United States, and all persons engaged in commerce in the wall paper trade, were compelled to, and did, sign the agreements attached to the answers as Exhibits 2 and 3, by which means competition between the manufacturers and the vendors of wall paper and

the jobbers and wholesalers was stifled, and the price of wall paper unduly enhanced, making it 50 per cent. higher than it would otherwise have been (Rec., p. 408).

Different functions in accomplishing this purpose were allotted to different members. To the plaintiff was allotted the task of keeping the manufacturers to their bargains as to prices, etc., and making contracts in its name with the jobbers and seeing that those contracts were observed; to the manufacturers was allotted the task of manufacturing the goods and selling to all purchasers, except jobbers, at the prices named, and not producing more wall paper than a fixed amount, viz., the then capacity of their mills; to the jobbers and quantity buyers, such as the defendant, was allotted the task of buying only from the plaintiff and the manufacturers, and selling only at prices which the manufacturers, the plaintiff and the wholesalers and the jobbers had agreed upon. Each party to the scheme and every contract in reference to it was an integral and necessary part to make effective the purposes of crushing out competition, enhancing and fixing the prices, and monopolizing the wall paper industry of the United States.

To the retailers of wall paper and consumers was allotted the task of paying the bills.

There could have been no other object than the enhancement and control of prices and the restraint of trade for the purpose of enhancing prices. It is so alleged and the demurrer admits such to be the fact. All the factories (so-called vendors) in the combination maintained sample rooms and selling agents, and solicited and received orders, just as before the combination (Rec., p. 402, par. 2). The Continental Wall Paper Company did not, therefore, work an economy of expenses for the several factories in the combination by combining, and therefore decreasing the aggregate sales expense,

but on the contrary, increased expenses, for the factories in the combination were compelled to send duplicate bills to the Continental Wall Paper Company every time they made a sale to a customer, and the Continental Wall Paper Company was obliged to maintain bookkeepers to properly enter these duplicate accounts, to pay dividends, maintain an organization, etc.

The combination was not, therefore, formed for the purpose of economizing expense, but its sole and only purpose and object was to enhance prices and restrict competition. After the combination had been made complete and the agreements had been signed by the several factories, and by their creature, the Continental Wall Paper Company, and the wholesalers had been compelled to sign the agreements, Exhibits 2 and 3, it was thereafter impossible

1. For any manufacturer of wall paper to sell, except at trust prices.

2. For any jobber of wall paper to buy, except at trust prices.

3. For any jobber to buy wall paper at any price, unless assenting to the combination's exactions, and becoming a party to the scheme and entering into the illegal agreements.

4. For any retail dealer in wall paper to buy of any jobber, except at trust prices.

5. For any individual consumer of wall paper to buy from any retailer, except at prices exacted as a result of the combination.

6. And finally, by reason of the control of all concerns manufacturing wall paper machinery in this country and Canada, no person or persons, firm or corporation could start up an independent factory.

A MORE COMPLETE AND EFFECTIVE COMBINATION TO RESTRICT COMPETITION AND ENHANCE PRICES COULD NOT BE IMAGINED.

The contracts which the defendant, in common with every other wholesaler and jobber in the country, signed (Exhibit 2—Rec., p. 433), bound the defendant and every other jobber to buy exclusively from the plaintiff. This was disguised by the provisions that the jobber "will purchase the *entire requirements* of the jobber" up to a certain amount; but this amount is averred in the answer to have been "at least double the entire amount purchased by the jobber during the preceding year," and "more than by any possibility could be needed by such jobber" (Rec. p. 406).

In the second place as to credit limitations, deliveries, equalization of freight rates, discounts from list prices, terms of payment, settlements, dates of invoices, etc., they impose and follow the provisions of the contract between the manufacturers and the plaintiff (Exhibit 1). Then follows (Exhibit 2—Rec., p. 434) this provision, likewise in accordance with (Exhibit 1—Rec., p. 420):

> "Third. Attached hereto marked 'B' is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers, and also a statement of discounts allowed to such customers other than jobbers for quantity purchases, together with the terms of credit and freight allowance to which such customers are entitled.
>
> "It is *an essential condition* of this agreement that the jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in Exhibit

B. the intent hereof being to assure the company against the use by the jobber of this agreement to undersell the company.

"The prompt performance by the jobber of the provisions of this agreement as to payment and *otherwise* is a *condition precedent* to exacting the continuous performance of said agreement by the company" (Rec., p. 434).

Every jobber in the United States signed this contract with plaintiff. No jobber could get goods *at all* from anybody unless he did.

The prices charged for merchandise in the exhibits attached to the amended petition are the prices fixed and determined in pursuance of and by the combination or trust agreement, and are at least one-half more than they would otherwise have been. All of said business was transacted in pursuance of said trust agreement (Rec., pp. 410-411). The manufacturers in the combination used the plaintiff only as a cloak. They themelves, as before, maintained sample rooms and selling agents, and solicited and received orders (Rec., p. 402). The itemized accounts which plaintiff was compelled to furnish by way of amendment to its petition, are accounts of manufacturers, and not of the plaintiff against the defendant (Rec., pp. 41-351 inc.).

The suit by plaintiff on an account is an attempt to enforce the illegal agreement.

III.

It is true that the defendant in a sense was the victim of the combination begun by the manufacturers, *i. e.*, in the sense that it was compelled by the power of the combination and its threats (Rec., p. 408) to enter into the aforesaid agree-

ment (Exhibit 2) and in the sense that it was compelled to pay trust prices for the goods that it bought, that is, prices 50 per cent. higher than they would otherwise have been, upon which goods it sustained a great loss after the termination of the trust agreement, when prices fell to their natural level. But, nevertheless, it did sign the agreement, and thereby made itself a party to the combination in common with all other wholesalers and jobbers of the country, who entered into precisely similar agreements. (See opinion in the Circuit Court of Appeals, Rec., p.). Thereby, pursuant to the original plan, which was always in the contemplation of the manufacturers, the combination was extended to include all the wholesale trade of the country, and its evils of enhancing prices, restraining competition, etc., to that extent expanded. It can make no difference, in determining the legality of that agreement, whether the defendant was constrained into it or entered into it voluntarily. It was illegal and unenforceable because of the object and effect of it in enhancing prices and restraining competition, and because directly connected with and a part of the combination as an entirety.

IV.

The combination was an unreasonable restraint of trade, and invalid both at common law and under the act of Congress known as the Sherman law, and under the state statutes. The courts below did not find it necessary, in order to bring this combination within the prohibition of the Sherman law, to construe the latter as prohibiting such restraints of trade as were reasonable at common law, but expressly found the agreements to be unreasonable and void at common law, and therefore within the prohibition of the Sherman law, as well as the

state statutes, under any construction that might be given them. (See opinion of the Circuit Court of Appeals, Rec., p.). Reference is here made to the Statutes.

Act of Congress of July 2, 1890, 26 Stat., 209.

Acts of New York, 1897, Chap. 383.

Acts of New York of 1899, Chap. 690.

Act of Ohio of April 19, 1898, known as the Valentine Act, 93 O. L., 143.

The corporate organization of the plaintiff can not be used as a cloak to cover the illegal contracts between the real parties to the scheme in order to make that legal which would otherwise be illegal.

Northern Securities Co. v. *U. S.*, 193 U. S., 197.
Distilling Co. v. *People*, 156 Ill., 448.
Harding v. *Glucose Co.*, 182 Ill., 551.
Richardson v. *Buhl*, 77 Mich., 632, 656 *et seq.*

All parts of the scheme, all the facts and circumstances, must be considered.

Addyston Pipe & Steel Co. v. *U. S.*, 175 U. S., 211, 245.
Swift & Co. v. *U. S.*, 196 U. S., 375, 396.
Montague v. *Lowry*, 193 U. S., 38, 45.

When so viewed the combination, and all its parts, was clearly illegal and unenforceable, both at common law and under the statutes.

U. S. v. *Trans. Mo. Frgt. Assn.*, 166 U. S., 290.
U. S. v. *Joint Traff. Assn.*, 171 U. S., 505.
U. S. v. *Addyston P. & S. Co.*, 175 U. S., 211, 244.
Montague v. *Lowry*, 193 U. S., 38.
Northern Securities Co. v. *U. S.*, 193 U. S., 197.
Swift & Co. v. *U. S.*, 196 U. S., 375.

National Cotton Oil Co. v. *Texas*, 197 U. S., 115, 129.
City of Atlanta v. *Chat. F. & P. Co.*, 101 F. R., 900.
U. S. v. *C. & O. Fuel Co.*, 115 F. R., 610.
U. S. v. *The Addyston P. & S. Co.*, 85 F. R., 271.

The cases in the state courts, of which there are many, are to the same effect. Reference is here made to but a few:

Cummings v. *Union B. S. Co.*, 164 N. Y., 401, 404-6; s. c. 15 App. Div., 602.
Cohen v. *Berlin & Jones Env. Co.*, 166 N. Y., 292, 300-304; rev. s. c. 38 App. Div., 499.
Straus v. *American Publishers' Assn.*, 177 N. Y., 473.
Detroit Salt Co. v. *Nat'l Salt Co.*, 134 Mich., 103.
Finck v. *Granite Co.*, 187 Mo., 244.
Bishop v. *American Pres. Co.*, 157 Ill., 284.
Hardin v. *Amer. Glucose Co.*, 182 Ill., 551, 591-615; 615-618.
Morris Run Coal Co. v. *Barclay C. Co.*, 68 Pa. St., 173.
Emery v. *Ohio Can. Co.*, 47 O. S., 320.
Cent. Ohio Salt Co. v. *Guthrie*, 35 O. S., 666.

V.

The contract between plaintiff and defendant (Exhibit 2—Rec., p. 433), which is the foundation of the liability sought to be enforced by plaintiff under the short form of pleading sanctioned by the Ohio Code, was a part of a single scheme made by the plaintiff, not only with the defendant, but with every other wholesaler in the country. It was not collateral to the scheme, or independent of it. These contracts were intended and calculated to effect that which was the very purpose of the combination, viz., to effect a monopoly of the trade

in wall paper and to enhance prices by means of these contracts with wholesalers.

By these agreements by all wholesalers and jobbers with the plaintiff not only was all competition between the wholesalers and jobbers eliminated, and the agreement between the manufacturers and the plaintiff for the restraining of competition, the fixing of prices and the limitation of product extended beyond the manufacturers so as to include all the wholesale trade, but also the combination between the manufacturers and the plaintiff was thereby cemented. The wholesalers and jobbers, because of these contracts by which competition between themselves was eliminated, were assured of an opportunity of disposing of goods at the high level of prices fixed by the trust, and thereby induced to buy at those prices, and the manufacturers were held within the combination because, if anyone broke out, he would find no wholesaler who was able to buy his product.

This is not a mere case of a sale by a trust to an outsider, but a sale to one who, by force of the agreement is brought into the scheme and made a party thereto. It is this that distinguishes the case at bar from that of *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S., 540, which merely decides that the objection that a plaintiff corporation is a trust or monopoly, arising and existing in violation of law, can not be urged by a defendant who has voluntarily entered into a contract with it which is independent of and has no relation to its unlawful purposes, for the sake of avoiding such contract. Connolly defended solely upon the ground that plaintiff was a trust, and his defense was overruled. He did not, as does the defendant in this case, allege or rely upon the fact that his contract was in itself illegal or a part of the general plan to enhance prices and stifle competition. As pointed

out by Mr. Justice Holmes, speaking for this court, in the recent case of *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U. S., —, 27 Sup. Ct. Rep., 65, 66, "the sale [to Connolly] was not so connected in its terms with the unlawful combination as to be unlawful." The sales to defendant, on the contrary, were directly connected, and were made under agreements constituting a part of the unlawful scheme.

All the statutes relied on in this case expressly forbid the making of the contracts of which the one between the plaintiff and the defendant was a material step; expressly declare the contracts void; and expressly impose a penalty upon the making of them, and expressly make them criminal.

Under these statutes such transactions and such contracts are as illegal as gambling; as contracts to assist in the smuggling of goods; as contracts to make and circulate counterfeit money; as contracts to assist in prostitution, or which in any other way violate criminal statutes or further such objects.

Biggs v. *Lawrence*, 3 T. R., 454.
Wamell v. *Reed*, 5 T. R., 599.
Ribbans v. *Crickett*, 1 B. & P., 264, 266.
Law v. *Hudson*, 11 East, 300.
Jennings v. *Throgmorton*, Ryan & M., 251.
Pearce v. *Brooks*, L. R., 1 Ex., 213.
McMullen v. *Hoffman*, 174 U. S., 639, 655.
Gibbs v. *Gas Co.*, 130 U. S., 396, 412.
Irwin v. *Williar*, 110 U. S., 499.
Embrey v. *Jemison*, 131 U. S., 336, 348.
Miller v. *Ammon*, 145 U. S., 421, 427.

If a person enters into an illegal contract or transaction, he can not recover on the express contract, nor on an implied contract, even though the consideration has passed.

Todd v. *Caplinger*, 4 Bush. (Ky.), 139, 144.
Bull v. *Harrington*, 17 B. Monr., 349, 352-3.

Stewart v. *Thayer,* 170 Mass., 560, 562-3.
Ashbrook v. *Dale,* 27 Mo. App., 649, 654.
Cook v. *Forker,* 193 Pa. St., 461.
Seeligson v. *Lewis,* 65 Tex., 215, 223 (a case under a trust contract).
Houck v. *Brew. Assn.,* 88 Tex., 184, 190.

"Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent of the defendant can neutralize its effect."

Coppell v. *Hall,* 7 Wall., 542, 558.
McMullen v. *Hoffman,* 174 U. S., 639, 655, 665.
Armstrong v. *Toler,* 11 Wheat., 258, 274.

"Any one sued upon a contract may set up as a defense that it is a violation of the act of Congress, and, if found to be so, that fact will constitute a good defense to the action."

Bement v. *National Harrow Co.,* 186 U. S., 70.

VI.

Even if the contract between plaintiff and defendant had been such a one as was collateral to the main scheme, it would, nevertheless, have been invalid because an illegal agreement, *i. e.,* an agreement made illegal and penalized by law vitiates all collateral transactions entered into in its furtherance.

Pollock on Contracts, pp. 351-354, sixth edition.
Hammon on Contracts, Sec. 251a.
Anson on Contracts, pp. 185, 208-10, of the 8th edition, or pp. 190, 213-15, of the 9th edition.

VII.

The contract between the plaintiff and defendant, even if considered separately from the agreement between the manufacturers and the plaintiff, was one in restraint of trade, so as to preclude the plaintiff from recovery for goods sold and delivered under it to the defendant, for when taken in connection with the other contracts signed by all other jobbers and wholesalers, the stipulations as to prices, etc., at which they were to dispose of the goods purchased, and the requirements to buy only from the plaintiff, were unreasonable even at common law, and were they reasonable or unreasonable they were in violation of the Sherman Act and the state statutes, and are not severable as one of two or more promises resting on a legal consideration, but by reason of the form they took were conditions precedent to any promise of the plaintiff, and taint and render illegal the entire consideration by virtue of which the defendant agreed to pay any price for the goods. It is idle to treat this as a case where a vendor, to protect his business, imposes a reasonable restraint on the vendee, when he sells him property, real or personal. This is not a case like *Whitwell* v. *Continental Tobacco Company*, 125 Fed. Rep., 454; *Philips* v. *Iola Company*, 125 Fed. Rep., 593; *Hartman* v. *John D. Park & Sons Co.*, 154 Fed. Rep., 358. There the restrictions imposed by a manufacturer on his vendee were sustained because they were only reasonable efforts on the part of the manufacturer to aid his competition with other manufacturers. It appears as a reason for the decisions that the vendors did not have a monopoly of their respective products. In the case at bar the plaintiff did have a monopoly. What are reasonable restraints for one not having a monopoly to assist him in competition with his rivals are un-

reasonable in one having a monopoly, especially an illegal monopoly, the purpose of which restraints are to foster that monopoly.

Furthermore, agreements whereby competition between all the wholesale dealers in a commodity is annulled and the prices asked by them are fixed or enhanced, are as much in restraint of trade as similar agreements between manufacturers.

It has repeatedly been held that a contract between a plaintiff and defendant, although not unlawful if standing by itself, is unlawful when taken in connection with other facts from which it appears that such contracts form part of an unlawful combination in restraint of trade.

U. S. v. *Addyston Pipe & Steel Co.*, 85 Fed. Rep., 271, 290.
Cravens v. *Carter-Crume Co.*, 92 F. R., 479, 483.
Pacific Factor Co. v. *Adler*, 90 Cal., 110.
Santa Clara M. & L. Co. v. *Hayes*, 76 Cal., 387.
Strauss v. *Amer. Pub. Assn.*, 85 App. Div. (N. Y.), 446, 450; affirmed 177 N. Y., 473.
Detroit Salt Co. v. *Nat'l Salt Co.*, 134 Mich., 103, 120.
Frick v. *Granite Co.*, 187 Mo., 244, 269.
Bement v. *Nat'l Harrow Co.*, 186 U. S., 70, 85, 87, 94.

Plaintiff's contract with the defendant falls within the principle of the above cases without considering the combination between the manufacturers, because taken in connection merely with the similar contracts of all other wholesalers it shows a combination by which competition between the wholesalers of the country was eliminated.

Cases founded on patent rights, copyrights, etc., like *Park & Sons Co.* v. *Nat'l Wholesale Druggists' Assn.*, 175 N. Y., 1, must be distinguished because of the legal monopoly to which

a manufacturer or vendor of such goods is entitled. The distinction is distinctly brought out in the following cases:

Strauss v. *Amer. Pub. Assn.*, 177 N. Y., 473, 476.
R. T. W. Co. v. *Milwaukee Wks. Co.*, 142 Fed., 531.

VIII.

For a further and more extensive presentation of the foregoing reasons supporting the judgment below reference is made to the brief filed on behalf of the respondent in the Circuit Court of Appeals, of which a copy is hereto attached.

Your respondent respectfully submits that on consideration in its entirety of the third defense in its amended answer, which was sustained below, it will be found that this case involves the application of no new or novel principles of law, but that it is determined by the application of those principles which are well settled, and further, that the opinion of the Circuit Court of Appeals of the Sixth Circuit will be found to be without error, and therefore your respondent submits that no good or useful purpose would be subserved by prolonging this litigation, and respectfully prays that the petition be dismissed.

THE LEWIS VOIGHT & SONS COMPANY,
By W. L. VOIGHT, *President.*

ORRIS P. COBB,
MORISON R. WAITE,
Counsel for Respondent.

United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT.

CONTINENTAL WALL PAPER COMPANY,
Plaintiff in Error,

No. 1509. v.

THE LEWIS VOIGHT & SONS COMPANY,
Defendant in Error.

Brief for Defendant in Error.

The writ of error in this cause seeks to reverse a judgment entered in the United States Circuit Court, Southern District of Ohio (Rec., p. 455), dismissing the petition of the plaintiff below, who is the plaintiff in error here. This action followed the overruling of the demurrer of the plaintiff to the third defense in defendant's amended answer and was based upon the election of the plaintiff not to plead further. The demurrer and the action of the plaintiff in electing not to plead further are confessions of the truth of the facts alleged in said third defense.

The third defense to the amended answer (Rec., pp. 396-411), sets forth various facts showing the formation in 1898 of a trust or unlawful combination in the wall paper business in the United States, to which ninety-eight per cent. of the manufacturers of wall paper, the plaintiff, *all the wholesalers, jobbers and quantity buyers, including the defendant, were parties under various agreements and contracts,* which agreements and contracts were contrary to public policy and void:

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(*b*) Under the laws of the state of New York where the agreements were entered into and the contracts signed;

(*c*) Under the laws of the state of Ohio where they were to be carried out in part and the goods delivered, and thereafter, to be sold for delivery in various states;

(*d*) And under the Act of Congress commonly known as the "Sherman Act";

And further that the suit in form on an account set forth in the petition as amended was an attempt to enforce said illegal trust agreements.

A reading of the third defense is necessary to an understanding of the position of the defendant. In brief the facts alleged in this third defense and admitted by the plaintiff to be true and which show the existence of this illegal combination are these:

Prior to 1898 there were in existence in the United States some thirty-five factories manufacturing wall paper, controlling upwards of ninety-eight per cent. of the business of the country in that commodity (Rec., p. 398). Seventeen of them were owned by the National Wall Paper Company and eighteen by independent firms, individuals or corporations. They were located in seven states: New York, Pennsylvania, Massachusetts, New Jer-

sey, Maryland, Delaware and Ohio. They were in free and unrestricted competition with each other. There were two manufacturers of wall paper machinery: one, located in New Jersey, the other in Wisconsin (Rec., p. 404). There were wholesale dealers like the defendant, and retail dealers scattered all over the country. The course of business in the trade had been as follows: The manufacturers prepared samples of the various styles of wall paper they intended to manufacture for the trade the ensuing year. In September these samples were submitted, usually in New York, to the jobbers who repaired there for the purpose of ordering goods which were to be manufactured and shipped from time to time to their places of business. During the year the jobbers sold the goods to the retail trade throughout the country. The defendant was such a jobber, or wholesale dealer, at Cincinnati, and sold goods through Ohio, Kentucky, Indiana and Illinois and other states (Rec., p. 407).

In July, 1898, the scheme was devised to unite all the manufacturers and wholesalers and jobbers of wall paper and manufacturers of wall paper machinery in a combination to control this business. The retailers and consumers were alone left out.

The manufacturers agreed with one another that, while they should retain the ownership of their several plants and businesses and preserve their separate identities and operate said several manufactories and businesses as before, the control of said several businesses in all matters relating to and affecting the productions of said establishments and the prices and sale of wall paper should be placed under the control of a committee, which would adopt regulations and rules governing the manner of conducting the business of all the said manufacturers, includ-

ing the fixing of prices and the division of the profits (Rec., pp. 398-399).

In carrying this agreement into effect the following plan was devised (Rec., pp. 398, 399): The plaintiff corporation was to be organized under the laws of New York with a capital stock of $200,000, divided into 16,000 shares of $12.50 each, for the ostensible purpose of taking the entire output of wall paper to be manufactured. The stock was to be divided among the manufacturers in proportion to the number of rolls of paper manufactured by them the preceding year. It was to be paid for in cash and immediately endorsed in blank and deposited with the plaintiff (Rec., pp. 399, 404, 420, 423). As the National Wall Paper Company controlled about one-half of the business it was to name three directors of the company and the other manufacturers another three, and these six were to choose a seventh, a sort of umpire (Rec., p. 400). Then a contract (Ex. 1—Rec., p. 419) was to be entered into between each of the manufacturers and the corporation so organized, viz., the plaintiff. Another contract (Ex. 2—Rec., p. 433) was to be entered into between the plaintiff and each jobber of which three classes, known as "First," "Second" and "Third" Class Jobbers were to be formed (Rec., p. 406). The plaintiff under the terms of the writen agreement was to sell the goods to the jobber. A third contract (Ex. 3—Rec., p. 447) was to be entered into between each manufacturer and any other purchaser of wall paper in large quantities, known as a "quantity buyer" (Rec., p. 407).

The manufacturers under the terms of said written agreement were to sell the wall paper to the "quantity buyers" for the account of the plaintiff. All other purchasers of wall paper were to buy their goods at certain

fixed prices, known as "list prices," and all the manufacturers, jobbers and "quantity buyers" were to agree with the plaintiff not to sell any wall paper to anyone at less than such "list prices." These list prices were embodied in and made part of the contracts and are the same in each (See Exhibits 1, 2, 3—Rec., pp. 427, 430, 435, 441, 447).

In order to secure the faithful performance of these agreements and to prevent their violation by any member of the combination, whether in his capacity as manufacturer, jobber or quantity buyer, the following devices were adopted:

"Good faith" was to be secured on the part of the manufacturers by their furnishing statements and invoices of sales to the company and permitting the latter to audit their books (Rec., pp. 402, 403, 422), and further by their paying into the treasury of the plaintiff $200,000 as subscriptions for stock and at the same time depositing their stock with the company to be taken as liquidated damages in case of any violation of their contracts (Rec., pp. 404, 420, 423). Since the contracts were illegal neither party to them could ever recover upon them, and the manufacturers could neither get back their stock nor their money if they violated the terms of their contract.

The same "good faith" was to be secured on the part of the jobbers and quantity buyers by refusing to let them have any paper from practically the only sources in the country whence it could be procured, if they bought paper from anyone else or sold what they bought at any time at less than list prices (Rec., pp. 400, 405, 406, 434, 447).

To make sure that no other persons could manufacture wall paper, the makers of wall paper machinery agreed not to sell such machinery to anyone but the plaintiff and

the manufacturers who were in the combination (Rec., pp. 404, 405); and to prevent the manufacturers from increasing their capacity, and thus exposing themselves to the temptation of selling their product at less than list prices, they agreed not to run their factories longer than ten hours a day and to put in no machinery except to replace old machines which were discarded (Rec., pp. 404, 422, 423).

Nominally the plaintiff was to buy the entire product of all the factories at prices which were the estimated cost of manufacture and incidental expenses (Rec., pp. 401, 420). All contracts with and collections from jobbers were to be in the plaintiff's name, but the contracts with and collections from quantity buyers and other purchasers were to be attended to by the manufacturers (Rec., pp. 401, 420, 421).

In reality the agreement was, and so the business was carried on, that the manufacturers should maintain sample rooms and selling agents and solicit and receive orders from all wholesalers, whether jobbers or quantity buyers; that the entire business should be done by the manufacturers but payments should be made by the jobbers to the so-called company, the plaintiff (which was designated in the written agreement as "selling agent," Rec., p. 419), and by the wholesalers, other than jobbers, directly to the manufacturers (Rec., pp. 402, 408).

Blank forms of contract for the different members were prepared and agreed upon and the prices fixed (Rec., pp. 400, 406-407). The combination was to last one year with privilege of two renewals for one year each under certain conditions (Rec., pp. 404, 420).

The plaintiff was to have general supervision of the business of each manufacturer, with the right to examine

its books and establish a general system of accounting (Rec., pp. 403, 422). All invoices of sales were to be furnished and accounted for to the plaintiff (Rec., p. 402). The profits of the manufacturers were to be divided in the form of dividends on the stock based upon capacity and without reference to actual sales made by any manufacturer (Rec., p. 401). The profits of the jobbers were the difference between the list prices and the discounts allowed.

The foregoing scheme was completely carried out. Pursuant to said agreement the defendant and every other jobber and wholesaler of wall paper in the United States, and all persons engaged in commerce in the wall paper trade, were compelled to, and did, sign the agreements attached to the answers as Exhibits 2 and 3, by which means competition between the manufacturers and the vendors of wall paper and the jobbers and wholesalers was stifled, and the price of wall paper unduly enhanced (Rec., p. 408).

The prices charged for merchandise in the exhibits attached to the amended petition are the prices fixed and determined in pursuance of and by the combination or trust agreement and are at least one-half more than they would otherwise have been. All of said business was transacted in pursuance of said trust agreement (Rec., pp. 410-411).

The suit by plaintiff on an account is an attempt to enforce said illegal agreement.

I.

THIS CASE DOES NOT INVOLVE THE CLAIM THAT A THIRD PERSON PURCHASING FROM AN ILLEGAL TRUST CAN, BECAUSE OF THAT ILLEGALITY, ESCAPE PAYMENT FOR ARTICLES PURCHASED.

The plaintiff in error insists here, as below, that this defense involves a contention upon the part of the defendant that, a third person outside of a trust buying goods from the trust, can set up in defense to an action for the purchase price of the goods, that the plaintiff is an illegal combination or trust. No such contention is made upon behalf of the defendant and it is conceded that no such defense would be effective. Were there ever any doubt of the proposition, such doubt has been removed by the decision of the United States Supreme Court in *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S., 540, 545.

This case adopted the principle announced in many *nisi prius* cases prior thereto.

Edison Elec. Lt. Co. v. *Sawyer-Mann Elec. Co.*, 53 F. R., 598.
Amer. Soda Fount. Co. v. *Green*, 69 F. R., 333.
Empire Dis. Co. v. *McNulta*, 77 F. R., 700.
Olmstead v. *Dis. & Cattle Feed Co.*, 73 F. R., 44.
Dennehy v. *McNulta*, 86 F. R., 825.
Brown Saddle Co. v. *Troxel*, 98 F. R., 620.
Nat'l Fold. Box & Pa. Co. v. *Robertson*, 99 F. R., 985.
Otis Elev. Co. v. *Geiger*, 107 F. R., 131.
Harrison v. *Glucose Sug. Ref. Co.*, 116 F. R., 304, p. 308.

Combinations in restraint of trade and commerce are illegal and have been made by statute criminal but they are not outlawed, although in one case it was held that

when railroads arrange to fix rates for tickets in violation of the Sherman Act the court will not grant an injunction against "scalpers" trading in them.

D., L. & W. R. R. Co. v. *Frank*, 110 F. R., 689.

It is not, however, necessary for us to go so far in this case. Had the scheme been confined to the agreements actually made between the manufacturers and the plaintiff—(Exhibit 1 to answer)—there would have been a solid basis for the argument that the defendant could not set up the illegal character of those contracts either at common law or under the statutes to defeat a suit for the purchase price of goods sold to defendant.

The scheme and the agreements entered into to carry it into effect were not, however, confined to the plaintiff and the manufacturers. The defendant and *every wholesale dealer in wall paper in the United States* were parties to the scheme, and, in pursuance of the plan adopted, entered into contracts with the plaintiff containing provisions adapted to the purpose of carrying out the illegal objects of the trust and intended so to do, that is, to enhance and fix prices, to stifle competition and to restrain trade between the states (Rec., p. 408; Exhibits 2 and 3 attached to answer at Rec., pp. 433, 447).

This position is more fully presented hereafter in the brief but is now noted at the outset, because much of the brief of the other side is based on the assumption that the *Connolly* case controls.

II.

The Combination is One in Restraint of Trade or Commerce Among the Several States and an Attempt to Monopolize the Wall Paper Trade or Commerce Among the States.

The question is not, as treated by counsel for plaintiff in error, simply one as to whether or not the plaintiff company is a trust or unlawful combination. It is that and much more, for the plaintiff company is but an incident in the general scheme which embodies a combination between the manufacturers and wholesale dealers throughout the country. Plaintiff's corporate organization can not be used as a cloak to cover the illegal contracts between the parties to the scheme, nor does it make legal that scheme which without it would be clearly illegal.

Northern Securities Co. v. *U. S.*, 193 U. S., 197.
Distilling Co. v. *People*, 156 Ill., 448.
Harding v. *Glucose Co.*, 182 Ill., 551.
Richardson v. *Buhl*, 77 Mich., 632, 656 *et seq.*

The court will look through it for the intent of the real parties to the agreements forming the scheme, and will not be stopped by its nominal capitalization, which is less than a year's purchases of wall paper by the defendant alone (Rec., pp. 2, 410), and only 1-190 part of the capitalization of the National Wall Paper Co., one of its constitutent companies (Rec., p. 354). The court will see, as is alleged and admitted, that the agreements with and sales to the defendant were in fact made by the manufacturers, parties to the scheme (Rec., pp. 399, 402, 408), and that the plaintiff is but a nominal party to them all.

The language of Judge Minshall in *State* v. *Standard Oil Co.*, 49 O. S., 179, is applicable although used of the converse of the proposition:

> "Now, so long as a proper use is made of the fiction, that a corporation is an entity apart from its shareholders, it is harmless, and, because convenient, should not be called in question; but where it is urged to an end subversive of its policy, or such is the issue, the fiction must be ignored, and the question determined, whether the act in question, though done by shareholders, that is to say, by the persons united in one body, was done simply as individuals, and with respect to their individual interests as shareholders, or was done ostensibly as such, but, as a matter of fact, to control the corporation and affect the transaction of its business, in the same manner as if the act had been clothed with all the formalities of a corporate act. This must be so, because the stockholders having a dual capacity, and capable of acting in either, and a possible interest to conceal their character when acting in their corporate capacity, the absence of the formal evidence of the character of the act, can not preclude judicial inquiry on the subject. If it were otherwise then, in one department of the law, fraud would enjoy an immunity awarded to it in no other."

The scheme was not confined to the manufacturers alone, as in *U. S.* v. *Knight*, 156 U. S., 1.

Though limiting, controlling and regulating production, its general object and scope was to control the manufacturing, buying, selling and dealing in wall paper, to be transported among the several states from a time anterior to its manufacture, until it reached, through the manu-

facturers, the plaintiff, and through the plaintiff, the wholesalers, through the wholesalers, like the defendant, the retail dealers and consumers, in Ohio, New York and other states.

Different functions in accomplishing this purpose were allotted to different members. To the plaintiff was allotted the task of keeping the manufacturers to their bargains as to prices, etc., and making contracts in its name with the jobbers and seeing that those contracts were observed; to the manufacturers was allotted the task of manufacturing the goods and selling to all purchasers, except jobbers, at the prices named, and not producing more wall paper than a fixed amount, viz., the then capacity of their mills; to the jobbers and quantity buyers, such as the defendant, was allotted the task of buying only from the plaintiff and the manufacturers, and selling only at prices which the manufacturers, the plaintiff and the wholesalers and the jobbers had agreed upon. Each party to the scheme and every contract in reference to it was an integral and necessary part to make effective the purposes of crushing out competition, enhancing and fixing the prices, and monopolizing the wall paper industry of the United States.

To the retailers of wall paper and consumers was allotted the task of paying the bills.

There could have been no other object than the enhancement and control of prices and the restraint of trade for the purpose of enhancing prices. It is so alleged and the demurrer admits such to be the fact. All the factories (so-called vendors) in the combination maintained sample rooms and selling agents, and solicited and received orders, just as before the combination (Rec., p. 402, par. 2). The Continental Wall Paper Company did not,

therefore, work an economy of expenses for the several factories in the combination by combining, and therefore decreasing the aggregate sales expense, but on the contrary, increased expenses, for the factories in the combination were compelled to send duplicate bills to the Continental Wall papr Company every time they made a sale to a customer, and the Continental Wall Paper Company was obliged to maintain bookkeepers to properly enter these duplicate accounts, to pay dividends, maintain an organization, etc.

The combination was not, therefore, formed for the purpose of economizing expense, but its sole and only purpose and object was to enhance prices and restrict competition. After the combination was made complete (embracing more than 98 per cent. of all wall paper manufacturers and all manufacturers of wall paper machinery) and the agreements had been signed by the several factories, and by their creature, the Continental Wall Paper Company, and the wholesalers had been compelled to sign the agreements, Exhibits 2 and 3, it was thereafter impossible.

1. For any manufacturer of wall paper to sell, except at trust prices.

2. For any jobber of wall paper to buy, except at trust prices.

3. For any jobber to buy wall paper at any price, unless assenting to the combination's exactions, and becoming a party to the scheme and entering into the illegal agreements.

4. For any retail dealer in wall paper to buy of any jobber, except at trust prices.

5. For any individual consumer of wall paper to buy from any retailer, except at prices exacted as a result of the combination.

6. And finally, by reason of the control of all concerns manufacturing wall paper machinery in this country and Canada, no person or persons, firm or corporation could start up an independent factory.

A MORE COMPLETE AND EFFECTIVE COMBINATION TO RESTRICT COMPETITION AND ENHANCE PRICES COULD NOT BE IMAGINED.

Thus treating the matter, as it must be treated, as one general scheme, all one agreement, it is too plain for argument that it comes within the common law inhibition against contracts in restraint of trade, as well as the statutes. It is a method of treatment which plaintiff avoids. It would like to take up one part of the scheme and treat a contract in reference to that part as the only fact to be considered. That, however, will not answer. As said by Mr. Justice Peckham, in *Addyston Pipe & Steel Co.* v. *The United States*, 175 U. S., 211, at page 245:

> "All the facts and circumstances are, however, to be considered, in order to determine the fundamental question—whether the necessary effect of the combination is to restrain interstate commerce."

Mr. Justice Holmes, in *Swift & Co.* v. *U. S.*, 196 U. S., 375, 396, said:

> "The scheme, as a whole, seems to us to be within the reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think them separately when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful, and that intent can make no difference. But they are

> bound together as the parts of a single plan. The plan may make the parts unlawful. *Aikens* v. *Wisconsin*, 195 U. S., 194, 206."

It was also said by Mr. Justice Peckham, in *Montague* v. *Lowry*, 193 U. S., 38, 45, in arriving at the conclusion that the scheme therein considered related to interstate commerce, and, therefore, within the prohibition of the Sherman Act:

> "The provision as to this sale is but a part of the agreement, and it is so united with the rest as to be incapable of separation without at the same time altering the general purpose of the agreement. The whole agreement is to be construed as one piece, in which the manufacturers are parties, as well as the San Francisco dealers, and the refusal to sell on the part of the manufacturers is connected with and a part of the scheme, which includes the enhancement of the price of the unset tiles, by the San Francisco dealers. The whole thing is so bound together that when looked at as a whole, the sale of unset tiles ceases to be a mere transaction in the state of California, and becomes part of a purpose which, when carried out, amounts to, and is, a contract or combination in restraint of interstate trade or commerce."

The scheme in question in this case was so treated and held, as an entirety, by Judge Wing in the Northern District of Ohio, in a case between the Continental Wall Paper Company and William H. Findlay et al, involving precisely this defense in a precisely similar case, on precisely similar facts. He said:

> "By the third defense, it appears that the contract of sale, upon which is founded the claim of

the plaintiff, if any it have, was one to which the plaintiff and many manufacturers of wall paper and the defendants were parties. In this contract, which is Exhibit 3, attached to the answer, is found the following clause: 'It is an essential condition of this agreement, that the jobber will not, directly or indirectly, sell, or offer for sale, any of the merchandise purchased from the company hereunder, at lower prices, or upon better or more favorable terms than those shown in Schedule B; the intent hereof being to insure the company against the use by the jobber of this agreement to undersell the company.' This is clearly a contract in restraint of trade. The provision quoted inures to the benefit of the plaintiff and of a great number of manufacturers of wall paper located in various states of the Union. The business of the defendants, in the sale of wall paper, was carried on, as jobbers, in several states of the Union. The effect, therefore, of this provision of the contract, was to restrain commerce among the several states. It appears from this defense that it will be necessary for the plaintiff, in establishing its right to recover from the defendants, to rely upon this illegal contract. It is the undisputed law that, in such a situation, the court will refuse, not only to enforce such contract, but any alleged rights directly springing from it. Therefore, the demurrer to the third defense is overruled."

III.

This Combination was an Illegal Trust, and an Unlawful Combination Within the Meaning of the Statutes.

It is hardly necessary to discuss the proposition that this combination was not an illegal trust or unlawful combination within the meaning of the state or federal statutes.

If there are any cases to the contrary, they have been effectually disposed of in the case of *The United States* v. *The Addyston Pipe & Steel Company*, 85 F. R., 271, decided by this court, and the later decisions of the Supreme Court of the United States.

It is only necessary to refer to the following decisions, some of which have arisen under the Sherman Act; and some without reference to statutes, but all of which have involved the direct consideration of the illegal agreement or combination:

U. S. v. *Jellico C. & C. Co.*, 46 F. R., 432.
Amer. Bis. Mfg. Co. v. *Klotz*, 44 F. R., 721.
Oliver v. *Gilmore*, 52 F. R., 562.
C., M. & St. P. R. Co. v. *Wab., S. L. & E. R. Co.*, 61 F. R., 993, 997.
Nat'l Harrow Co. v. *Hench*, 83 F. R., 36, 38.
Nat'l Harrow Co. v. *Hench*, 84 F. R., 226.
U. S. v. *The Addyston P. & S. Co.*, 85 F. R., 271.
U. S. v. *The Addyston P. & S. Co.*, 175 U. S., 211, 244.
U. S. v. *Coal Dealers' Assn.*, 85 F. R., 252.
Cravens v. *Carter-Crume Co.*, 92 F. R., 479, 485.
Lowry v. *Tile & G. Assn.*, 98 F. R., 817, 826.
Lowry v. *Tile & G. Assn.*, 106 F. R., 38.
Lowry v. *Tile & G. Assn.*, 115 F. R., 27.

U. S. v. *C. & O. Fuel Co.*, 105 F. R., 93.
U. S. v. *C. & O. Fuel Co.*, 115 F. R., 610.
City of Atlanta v. *Chat., F. & P. Co.*, 101 F. R., 900.
U. S. v. *Trans. Mo. Frgt. Assn.*, 166 U. S., 190.
U. S. v. *Joint Traf. Assn.*, 171 U. S., 505.
Montague v. *Lowry*, 193 U. S., 38.
Northern Securities Co. v. *U. S.*, 193 U. S., 197.
Swift & Co. v. *U. S.*, 196 U. S., 37.
National Cotton Oil Co. v. *Tex.*, 197 U. S., 115, 129.

The cases which apparently hold the contrary, such as—

Olmstead v. *The D. & C. F. Co.*, 77 F. R., 265;
In re Green, 52 F. R., 104;
Deuber Watch Co. v. *E. Howard W. & C. Co.*, 66 F. R., 637;
Continental Ins. Co., v. *Bd. of Und.*, 67 F. R., 310,

are based on *The Mogul Steamship Co.* v. *McGregor*, L. R. (1892), Appeal Cases, 25, or are overruled, as pointed out in *The Addyston Pipe Case*, 85 Fed., 286, 300, or are distinguished in that case.

The cases, federal and state, also establish the further proposition, that a contract in restraint of trade, though on its face not unreasonable, and hence not void at common law, may become such if it is simply a part of a general scheme or one step towards the accomplishment of the purpose to restrain competition and establish a monopoly.

U. S. v. *Addyston P. & S. Co.*, 85 F. R., 285, 291, and cases cited.
Cravens v. *Carter-Crume Co.*, 92 F. R., 479, 485.
Detroit Salt Co. v. *Nat'l Salt Co.*, 134 Mich., 103, 120.
Pacific Fac. Co. v. *Adler*, 90 Cal., 110.

Finck v. *Granite Co.*, 187 Mo., 244; 2d Syl. and Opin., p. 269.

Of course parties to such a combination can not plead an honest intent in forming the combination, or the reasonableness of the restraint; under statutes forbidding such combination or agreement, such defenses are immaterial.

U. S. v. *Hopkins*, 82 F. R., 529.
U. S. v. *Coal Deal. Assn.*, 85 F. R., 252, 262, 264.
U. S. v. *Addyston P. & S. Co.*, 85 F. R., 271, 278, 291.
U. S. v. *Joint Traf. Assn.*, 171 U. S., 505, 565.
Addyston P. & S. Co. v. *U. S.*, 175 U. S., 211.
U. S. v. *C. & O. Fuel Co.*, 105 F. R., 93.
C. & O. Fuel Co. v. *U. S.*, 115 F. R., 610, 619.

In this last cited case, being one decided by this court, it is also declared that contracts which prevent competition free and unrestrained as to interstate commerce are within the condemnation of the Federal Statutes.

C. & O. Fuel Co. v. *U. S.*, 115 F. R., 610, 620.

This view has been accepted by the Supreme Court.

Montague v. *Lowry*, 193 U. S., 38.
Northern Securities Co. v. *U. S.*, 193 U. S., 197.

The state cases clearly show the illegality of the combination in question. We select a few, the provisions of the agreements of which bear resemblance to those of the wall paper trust:

Sugar Trust:

People v. *N. R. S. Co.*, 121 N. Y., 582; s. c. 54 Hun, 354; s. c. 27 N. Y. St., 282.

Crushed Granite Trust:

Finck v. *Granite Co.*, 187 Mo., 244.

Lamb Dealers and Butchers' Trust:

Judd v. *Harrington*, 139 N. Y., 105.

Coal Dealers' Trust:

People v. *Sheldon*, 139 N. Y., 251, 262, 264-265.

Brick Companies' Combination:

Phoenix Bridge Co. v. *Keystone B. Co.*, 142 N. Y., 425.

Milk Exchange and Milk Trust:

People v. *Milk Exchange*, 145 N. Y., 267, 271-4.

Ford v. *Chi. Milk Ship. Assn.*, 155 Ill., 166, 167, 176.

Blue Stone Trust:

Cumming v. *Union B. S. Co.*, 164 N. Y., 401, 404-6; s. c. 15 App. Div., 602.

Envelope Trust (similar case to one at bar):

Cohen v. *Berlin & Jones Env. Co.*, 166 N. Y., 292, 300-304; rev. s. c. 38 App. Div., 499.

Publishers and Book Dealers' Trust:

Straus v. *American Publishers' Assn.*, 177 N. Y., 473; s. c. 85 App. Div., 446.

Harrow Trust:

Nat'l Harrow Co. v. *Bement*, 21 App. Div., 290.

Wire Cloth Trust:

De Witt W. C. Co. v. *N. J. Wire Cloth Co.*, 16 Daly, 529, 533.

Salt Trust:

Chancey v. *Onondaga F. S. Mfg. Co.*, 62 Barb., 395, 405-7.

Detroit Salt Co. v. *Nat'l Salt Co.*, 134 Mich., 103.

Stenographers' Trust:

Moore v. *Bennett*, 140 Ill., 69.

Dynamite Trust:

Vulcan Pow. Co. v. *Pow. Co.*, 96 Cal., 510, 514-5.

Distillery Trust:

Dist. & C. Feed Co. v. *The People*, 156 Ill., 448, 458-467; 490-491.

State v. *Neb. Dist. Co.*, 29 Neb., 700.

Preservers' Trust:

Bishop v. *Amer. Pres. Co.*, 157 Ill., 284.

Glucose Trust:

Hardin v. *Amer. Glucose Co.*, 182 Ill., 551, 591-615; 615-618.

Butter Buyers' Trust:

Chapin v. *Brown Bros.*, 83 Iowa, 156, 157-9, 162.

Insurance Trust:

Beechley v. *Mulville*, 102 Iowa, 601, 602-5.

State, ex rel Fire Fund Ins. Co., 150 Mo., 1, 39, 42-44.

Steamboat Trust:

Anderson v. *Jett*, 89 Ky., 375.

White Lead Trust:

Nat'l Lead Co. v. *Grote Pt. & S. Co.*, 80 Mo. App., 247, 265.

Brewers' Trust:

Hester v. *Brew. Co.*, 161 Pa. St., 473.

Houck v. *Brew. Assn.*, 88 Tex., 184, 186-8.

Masters Plumbers' Association:

Bailey v. *Master Plumb.*, 103 Tenn., 99, 101-2; 115-117.

Cotton Seed Oil Mills Association:

Tex. Stand. Oil Co. v. *Adoue,* 83 Tex., 650, 657-9.

Under the Texas statute it has also been held that agreements not to sell or not to buy, except from each other, come within the statute forbidding agreements in restraint of trade and competition.

Carriage Co. v. *Hatch,* 19 Tex. App., 120.
Fuqua v. *Pabst Brew. Co.,* 90 Tex., 298, 301-2.
Tex. Brew. Co. v. *Templeman,* 90 Tex., 277, 280-1.

In Michigan a contract of sale by which the buyer agrees not to buy any other articles of the same kind in certain counties is held to be within the Michigan statutes against contracts interfering with competition.

Bingham v. *Brands,* 119 Mich., 255.

Agreements for boycotting persons not members of an association are held in several states to come within statutes forbidding stifling competition and are also void at common law as in restraint of trade.

Ertz v. *Pro. Exchange,* 82 Minn., 173.
Jackson v. *Stanfield,* 132 Ind., 592.
Doremus v. *Hennessey,* 176 Ill., 608.
Hartnell v. *Plumb. Sup. Assn.,* 169 Mass., 229.
Boutwell v. *Marr,* 71 Vt., 1.
Int. Ocean Pub. Co. v. *Ass. Press,* 184 Ill., 438.
Hawarden v. *Youghiogheny & D. C. Co.,* 111 Wis., 545.

An agreement, the result of a combination of all the other lumber dealers in a city to buy out a lumber dealer and take from him an agreement not to engage in the lumber business in that city again for ten years from date, is within the Texas Anti-trust act.

Comer v. *Burton Lingo Co.*, 24 Tex. Civ. App., 251.

In Tennessee certain companies formed a corporation and took the stock thereof for the purpose of having it handle and sell eighty-five per cent. of the produce of the old companies. While this prevented competition between the old companies it did not enhance prices. It was held to be within the Tennessee Anti-trust laws.

Amer. Handle Co., Ltd., v. *Stand. Han. Co.*, 59 S. W., 709.

There have been numerous coal dealers' trusts, salt trusts, etc. They have always been held to be illegal. Most of them and other cases are cited in Addyston Pipe Company case.

Arnot v. *P. & E. C. Co.*, 68 N. Y., 558.
Morris Run Coal Co. v. *Brad. C. Co.*, 68 Pa. St., 173.
Emery v. *Ohio Can. Co.*, 47 O. S., 320.
Cent. Ohio Salt Co. v. *Guthrie*, 35 O. S., 666.

Other Ohio cases, dealing with the general subject, are:

Crawford v. *Wick*, 18 O. S., 190, 203.
Widoe v. *Webb*, 20 O. S., 431.
McBirney v. *Con. Lead Co.* 9 W. L. B., 309, 310.
Hoffman v. *Brooks*, 11 W. L. B., 258.

The U. S., New York and Ohio Statutes are printed as an appendix to this brief.

IV.

The Contract Between Plaintiff and Defendant, Under Which Arises the Account Sued on, is a Part of and Directly Connected With the Illegal Combination, and Hence, Unenforceable, and not Merely a Collateral or Independent Contract.

A consideration of the allegations of the third defense demonstrates that the contract, Exhibit 2 (Rec., p. 433), which was made between the plaintiff and the defendant, and also as a part of the same scheme between the plaintiff and every other jobber in the United States (Rec., p. 408) was not collateral to the scheme or combination, or independent of it. The purposes of the combination were at least two-fold, namely, to effect a monopoly of both the manufacturers of and the trade in wall paper, and second, to enhance prices. Exhibit 2, in the light of the facts pleaded, when made, as it was, between the plaintiff and every other jobber and wholesaler in the country, was intended and calculated to effect both of these objects. The jobber undertook to buy all his paper up to a certain amount, which amount was more than double what he had ever used, or was likely to use, from the plaintiff alone, and he also agreed not to sell at prices lower than those fixed by the plaintiff and to which every other jobber agreed, and the performance of these undertakings was a condition on which alone he could continue to receive goods from the plaintiff or its constituent companies representing the manufacturers of upwards of 98 per cent. of the wall paper manufactured in this country. It is clear that this is not a mere case of a sale by a monopoly or a trust to a third person and that the objection raised by the defendant is not the same as that

which would be raised by an outsider purchasing from a trust.

So much is made in argument of the case of *Connolly* v. *Union Sewer Pipe Company*, 184 U. S., 540, as well as of the cases decided upon the same principle, that it is proper to say a word or two further in connection with that case.

It merely decides that the objection that a corporation is a trust or monopoly arising and existing in violation of law, can not be urged by one who has voluntarily entered into a contract with it which is independent of and has no relation to its unlawful purposes, for the sake of avoiding such contract.

The converse, however, of the proposition is equally true, namely: that if the contract entered into is not independent of but is made in execution of and in furtherance of the unlawful purposes sought to be accomplished, and as part of the scheme, no suit can be maintained by either party upon such a contract.

The case of *Connolly* v. *Union Sewer Pipe Company*, 184 U. S., pp. 548 and 549, brings out this distinction clearly. In that case Connolly defended solely upon the ground that the plaintiff company was a trust and his defense was overruled. He did not, as does the defendant in this case, allege or rely upon the fact that his contract with the Union Sewer Pipe Company was in itself illegal, or a part of the general plan to enhance prices and stifle competition. Had he done so his defense might have been successful, because the record shows that the contract actually made by Connolly with the Union Sewer Pipe Company had in it elements of illegality entirely independent of the illegal character of the plaintiff company.

He, however, based his defense solely upon the fact that the Union Sewer Pipe Company was a trust and sought to avoid the payment of the purchase-price of the goods on that ground alone. He largely relied upon the Illinois statute which recognized such defense but which was held unconstitutional.

All the other cases cited by plaintiff are founded upon well recognized distinctions which differentiate them from the case at bar. They fall under various classes, as follows, and must be distinguished from the case at bar:

1st. We must distinguish a sale made under and in pursuance of, and in carrying out, a contract void, because forbidden by statutes and the law prohibiting trusts and trust agreements, restraint of trade, enhancing prices, etc., and a sale made entirely outside as to a person who is not a member of the trust.

2d. We must distinguish between cases arising under the common law and cases arising where a statute has made contracts in restraint of trade or competition void; have forbidden them under penalty and have made them criminal.

3d. We must distinguish cases where the contract itself is legal, but the time or manner of making the contract alone is forbidden.

4th. We must distinguish cases arising under statutes enacted for a particular class of persons where the enforcement of the prohibition would frustrate the purpose of the statute.

5th. We must distinguish cases where, by agreement of the parties to the illegal transaction, the illegal transaction has been ended and money delivered by one person to a mere agent to be delivered to a third person, the de-

livery to the agent vesting title to the money or property in the other party.

6th. We must distinguish cases where the agreement which would be otherwise unlawful is held valid for the reason that the agreement is but a method upon the part of the owner of a legal monopoly of dividing up or dealing with that monopoly, as for instance, an agreement respecting patented or copyrighted articles.

Every case cited by the plaintiff comes within one or the other of these classes.

The fact that the consideration has all been executed on one side can not alter the matter. Judge Force, in the case of *The McBirney & Johnsons White Lead Co.* v. *The Consolidated Lead Co.*, 9 W. L. B., 309, 311, in his very able opinion, shows that that has no application. This court, in the case of *Cravens* v. *Carter-Crume Co.*, 92 F. R., 479, 485, in which the plaintiff attempted to recover an agreed amount, and had entirely executed the consideration on his part, said that although the plaintiff may have been duped by artful men, nevertheless he was a business man, was not mentally incompetent in any sense so as to absolve himself from responsibility for the illegal consequences of his act, and that in such a case the court does not administer equity according to the relative merits of the parties.

All the statutes relied on in this case expressly forbid the making of the contracts of which the one between the plaintiff and defendant, set out in the third defense, was a material step; expressly declare the contracts void; and expressly impose a penalty upon the making of them and expressly make them criminal.

Under these statutes such transactions and such contracts are just as illegal as gambling; as contracts to as-

sist in the smuggling of goods; as contracts to deal in futures; as contracts to make and circulate counterfeit money; as the sale of liquor in violation of law; as contracts to assist in prostitution; or in any other way to violate criminal statutes, or in furtherance of such objects.

And now for the cases and first cases at common law in England.

If a contract of sale is illegal, there can be no recovery of goods sold in an action for goods sold and delivered. Per Ashhurst and Buller, JJ.

Alexander v. *Owen*, 1 T. R., 22.

A person who packs goods in a certain way to enable the buyer to smuggle them, can not recover in an action for goods sold and delivered.

Biggs v. *Lawrence*, 3 T. R., 454.
Wamell v. *Reed*, 5 T. R., 599.

No recovery can be had by an inn-keeper for provisions furnished to voters for a candidate, in violation of law.

Ribbans v. *Crickett*, 1 P. & P., 264, 266.

Nor by a printer for labor and materials in printing a book to which he does not affix his name, as required by statute, under a penalty.

Bensley v. *Bignold*, 5 B. & Ad., 335.
Marchant v. *Evans*, 2d J. B. Moore, 14.

No recovery can be had by the seller for the value of bricks sold and delivered where the statute requires them to be of a certain size under a penalty.

Lane v. *Hodson*, 11 East., 300.

So there can be no recovery by an unlicensed broker for work and labor.

Cope v. *Rowlands*, 2 M. & W., 149.

So no recovery can be had for use and occupation, after the lessor knows that the premises are used for purposes of prostitution.

Jennings v. *Throgmorton*, Ryan & M., 251.

Nor can recovery be had for the use of a conveyance hired to a prostitute to enable her to carry on her vocation.

Pearce v. *Brooks*, L. R., 1 Ex., 213.

So no recovery can be had for the value of butter sold by a farmer in firkins not branded as required by law under a penalty.

Foster v. *Taylor*, 3d Nev. & Man., 244; s. c. 5 B. & Ad., 887.

No recovery can be had on an implied contract to pay for coal sold and delivered without a ticket, as required by law, under a penalty.

Cundell v. *Dawson*, 4 C. B., 376, 397, 400.
Little v. *Poole*, 9 B. & C., 192, 199-203.

In America the cases are to the same effect.

A recovery can not be had by one privy to the unlawful design for services rendered in procuring execution of an illegal contract. See especially what is said in *McMullen* v. *Hoffman*, 174 U. S., 639, bottom of page 655.

Gibbs v. *Gas Co.*, 130 U. S., 396, 412.
Irwin v. *Williar*, 110 U. S., 499.
McMullen v. *Hoffman*, 174 U. S., 639.
Embry v. *Johnson*, 131 U. S., 336, 348.
Miller v. *Ammon*, 145 U. S., 421, 427.

One who has actively participated in an attempt to violate the low or public policy can not recover for the price of articles sold.

Kohn v. *Melcher,* 43 Fed., 641.
Hanauer v. *Doane,* 12 Wall., 342.
Sprott v. *U. S.,* 20 Wall., 459.

The state decisions are to the same effect.

In an action of assumpsit on the common counts for work and labor performed under an illegal contract after it had been rescinded it was held that no recovery could be had for value parted with under the illegal contract.

Peck v. *Burr,* 10 N. Y., 294, 297-300.
Unckles v. *Colgate,* 148 N. Y., 529, 538.
Johnston v. *Dahlgren,* 166 N. Y., 355, 358.
Clancey v. *Onondago F. S. Mfg. Co.,* 62 Barb., 395, 405-6.
Brinkman v. *Eisler,* 40 N. Y. St., 865, 866.

Peck v. *Burr* contains a clear cut statement of the law. The cases in 62 Barb. and 40 N. Y. and 148 N. Y. are cases growing out of contracts illegal because in violation of statutes forbidding the formation of trusts and contracts in restraint of trade and competition.

If the contract be illegal there can be no recovery under an implied contract.

Berka v. *Woodward,* 125 Cal., 119, 120, 121.
Smith v. *Albany,* 61 N. Y., 244.
Finn v. *Donohue,* 35 Conn., 216, 217, 218.

In a case already cited of *Bishop* v. *The American Preserving Co.,* 157 Ill., 284, 311-315, 320, an illustration is given of how far courts will go in leaving parties to a trust agreement where they find them. Bishop sold his stock and plant to the American Preservers Company,

which was a trust, and gave it a bill of sale, receiving in return certificates for 331 shares of stock. It put him in charge of its plant as agent. He attempted to rescind and the company sued in replevin. It was held that the whole thing was illegal and the court would leave the parties where it found them. The maxim *in pari delicto* applied between the immediate parties to an illegal contract.

No recovery can be had on the common counts if the contract be illegal although fully executed.

Pike v. *King*, 16 Iowa, 49, 52.
Meader v. *White*, 66 Me., 90, 92.
Dodson v. *Harris*, 10 Ala., 566, 569.
Treewert v. *Decker*, 51 Wis., 46, 47.
Simpson v. *Nicholls*, 3 M. & W., 240, 243-4.
Amer. Straw. Co. v. *Peoria S. B. Co.*, 63 Ill. App., 502, 527-8.

The case of *American Strawboard Co.* v. *Peoria Strawboard Company* is one for value received under a trust contract.

No recovery can be had on a *quantum valebant* for the value of a wagon worth $120 for which the vendee was to pay $240 when Tilden was elected and $5 if he was not elected, the wagon being delivered to the vendee at the time of the contract. After the election the vendor demanded the wagon back, thus attempting to rescind the contract. The redelivery of the wagon was refused.

Davis v. *Leonard*, 69 Ind., 213.
Todd v. *Caplinger*, 4 Bush. (Ky.), 139, 140, 142, 144.

A suit was brought for the value of services in threshing grain. The defense was that it was agreed that the threshing should be done by a machine whose working

parts were not boxed as required by a law which made running such a machine a misdemeanor. *Held:* No recovery could be had.

Dillon v. *Allen*, 46 Iowa, 299.

No recovery can be had for services by a real estate agent who has no license as required by a valid city ordinance.

Richardson v. *Brix*, 94 Iowa, 626, 628-9.
Young v. *Denning*, 52 Kans., 629.

There can be no recovery for value of liquors sold in violation of law.

Dolson v. *Hope*, 7 Kans., 161.
Griffith v. *Wells*, 3 Den., 226.
Bliss v. *Brainard*, 41 N. H., 256.
Buck v. *Albee*, 26 Vt., 184, 190, 191.

No recovery can be had on a *quantum meruit* for services in the grocery department of a business under a contract to work for agreed wages as clerk and barkeeper for a dealer in groceries and provisions and keeper of a saloon, the sale of liquor being prohibited.

Sullivan v. *Horgan*, 17 R. I., 109.
Bixby v. *Moores*, 51 N. H., 402.

If attorneys agree to defend persons for future violations of law and do so defend them, they can not recover on an implied contract. No recovery can be had on an implied contract for any violation of public policy or in any matter tainted with immorality or illegality.

Bowman v. *Phillips*, 4 Kas. App., 364, 367.

If a person deliberately enters into a contract or transaction forbidden by law he can not recover on the express contract nor will the law imply one for him.

Todd v. *Caplinger*, 4 Bush. (Ky.), 139, 144.

A law forbade peddlers without license selling goods not the product of Kentucky and it was held that there could be no recovery for the reasonable value of such goods sold.

Bull v. *Harrington*, 17 B. M., 349, 352-3.

When services are rendered under an illegal contract the law will not imply a valid contract to pay for them.

Stewart v. *Thayer*, 170 Mass., 560, 562-3.

Recovery can be had on an implied contract for the reasonable value of use and occupation under an express contract which fails for informality but not where it fails for illegality, as where a house is let to be used for a brothel.

Ashbrook v. *Dale*, 27 Mo. App., 649, 654.

A contract will not be implied where for any reason an express contract would be invalid.

Cook v. *Faker*, 193 Pa. State, 461.
Soligson v. *Lewis*, 65 Tex., 215, 223 (a case under a trust contract).

In a suit on an account there was a plea of sale on a contract giving defendant sole right to sell by wholesale plaintiff's beer in El Paso, and breach asking damages. Reply that agreement set up in the answer was in aid of a trust. Amended answer denied trust, and said if it

was one, plaintiff sold the goods to aid in the trust. *Held:* That the plaintiff could not recover for the goods so sold.

Hough v. *Brew. Assn.*, 88 Tex., 184, 190.
Pasteur Vaccine Co. v. *Burke*, 22 Tex. Civ. App., 232-233.

No recovery can be had on a *quantum valebant* for building a nine-pin alley, the keeping of which is forbidden by law.

Spurgeon v. *McElvain*, 6 O. R., 442.

These cases show that wherever and in whatever form the question has arisen, whether for goods sold or delivered, for money loaned, services rendered, the decisions have been uniform, that no recovery can be made on an implied contract where the express contract is illegal and the goods sold, the money loaned, or the services performed under and in pursuance of and in furtherance of an illegal contract.

Some of the cases, including *Connolly* v. *Union Sewer Pipe Company*, use language to the effect that a recovery may be had where the plaintiff is not obliged as part of his own case to disclose the illegal contract. While that may be, and undoubtedly is in some cases a good guide for determining whether the contract sued on is collateral or incidental to or a part of the illegal contract or not, it is not the only test nor is it so held to be where the question has arisen. While many cases might be cited to this effect the decisions of the Supreme Court of the United States are controlling.

As said in *Coppell* v. *Hall*, 7 Wall., 542, at page 558:

> "Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent of the defendant can neutralize its effect."

See also *McMullen* v. *Hoffman*, 174 U. S., 655, at p. 665, and the leading case of *Armstrong* v. *Toler*, 11 Wheat., 258, at p. 274.

V.

Even if the Contract Between Plaintiff and Defendant be Deemed Collateral to the Main Scheme it is Nevertheless in Itself Invalid.

In Pollock on Contracts, pp. 351-354 (6th Ed.), (Wald's Pollock's Contracts, side pp. 322-325) it is said:

> "Where the immediate object or consideration of an agreement is not unlawful but the intention of one or both parties in making it is unlawful, then—
>
> "If the unlawful intention is at the date of the agreement common to both parties, or entertained by one party to the knowledge of the other, the agreement is void. * * *
>
> "Here it is necessary to consider what sort of connection of the subject-matter of the agreement with an unlawful plan or purpose is enough to show an unlawful intention that will vitiate the agreement itself. This is not always easy to determine. * * * We have in the first place a well marked class of transactions where there is an agreement for the transfer of property or possession for a lawful consideration but for the purpose of an unlawful use being made of it. All agreements incident to such transaction are void; and it does not matter whether the unlawful purpose is in fact carried out or not. The later authorities show that the agreement is void not merely if the unlawful use of the subject-matter is part of the bargain, but if the intention of the one party so to use it is known to the other at the time of the agreement. * * *

"An agreement may be void by its connection with an unlawful purpose though subsequent to the execution of it. To have that effect, however, the connection must be something more than a mere conjunction of circumstances into which the unlawful transaction enters, so that, without it, there would have been no occasion for the agreement. It must amount to a unity of design and purpose, such that the agreement is really part and parcel of one entire unlawful scheme."

In Hammon on Contracts, Sec. 251*a*, it is said:

"A distinction is to be noted between agreements which are illegal and agreements which are merely void—between agreements which the law will not aid, and agreements which the law desires to prohibit. This distinction comes out, not in a comparative validity of the two, for both are void, but in the effect which their peculiar character imparts to collateral transactions. An illegal agreement vitiates all collateral transactions entered into in its furtherance, however innocent such transactions may be in themselves; but if an agreement is merely void, and not illegal, it is otherwise. Collateral transactions are not vitiated by the nullity. * * * Our present inquiry concerns the effect of illegality; and it may be laid down as a rule that the unlawfulness of a pending or contemplated transaction vitiates an otherwise lawful promise founded upon it, so that no rights are created by the promise, or can result from it."

Reference is also made to Anson on Contracts, pp. 185, 208-210, of the 8th Ed., or 190, 213-215 of the 9th Ed., the language used in Hammon on Contracts being a condensed statement of that in Anson.

It is submitted that the foregoing principles which are clearly made out from the cases are applicable to the matter now under consideration. The scheme and purpose of creating a monopoly, of enhancing prices and of restraining commerce were clearly illegal. The contract between the plaintiff and defendant, under which goods were sold, and by which in express terms the prices to the public generally were enhanced and fixed and the scheme for monopoly enforced, manifests the unlawful intention of one, or both, of the parties making it. The fact that the same contract was made by every other wholesaler as part of the same scheme, is conclusive of the illegal intent. While the mere sale of goods in consideration of a price to be paid would be legal if it stood alone, it becomes illegal when it was entered into directly for the furtherance of the illegal agreements to enhance prices and restrain commerce.

Were it otherwise we should have indeed a very curious anomaly. This principle of public policy under which the courts refuse to carry out or enforce unlawful contracts is invoked by the courts not for the benefit of the parties to unlawful contracts, but for the benefit of the public at large and by way of deterring evil-doers. Yet, if the contention of the plaintiff be sustained in this case, by which it is conceded that the sales of goods by manufacturers to the plaintiff company as part of a conspiracy in restraint of trade, are void, so that the manufacturers could not recover from the plaintiff the price of the goods delivered, nevertheless the sales of the same goods to the defendant and other jobbers and wholesalers as a part of the same scheme and with the express intention of fixing prices and restraining competition, would be valid and the plaintiff entitled to recover the price of such goods

from its vendees. The latter step in the scheme or combination is as much a part of the whole scheme as the first step and were the principles for which plaintiff contends applied we would have the law working to the advantage of the principal wrong-doer who could receive goods without any legal obligation to pay for them and deliver them as a part of the same scheme or purpose and recover payment. It is difficult to see how an assertion of public policy in such a manner would benefit the public or anyone except the very parties to the illegal scheme who should abide by it from its inception to its finish.

VI.

A Direct Proceeding by the State or Federal Authorities to have the Plaintiff Declared a Trust or Combination Within the Meaning of the Anti-Trust Law is not Necessary Before a Valid Defense to a Suit on the Illegal Contract can be set up.

As has been stated, the action is not apparently on the contract which is a trust agreement, but under the short form allowed by the code on an account for goods sold and delivered. But from the defense under consideration it appears and is admitted that, the prices charged in the account are the prices fixed in the agreements including the agreement for the sale of the wall paper, that the account arises under these agreements and that these agreements are void. This being so, the action is not one to recover the price of goods sold to third persons by a trust under a contract for the purchase and sale of goods, but to recover from a person who was a party to the illegal agreement by force of the illegal agreement.

It is, therefore, clear that the facts stated in the third defense constitute a valid defense to an action for the contract price.

That a recovery can not be had upon the contract seems abundantly settled by the Federal Court.

Cent. Trans. Co. v. *Pull. Pal. Car Co.*, 131 U. S., 24.
McMullen v. *Hoffman*, 174 U. S., 639, 654.
Embery v. *Johnson*, 131 U. S., 336, 348.
Miller v. *Ammon*, 145 U. S., 421, 427.
Connolly v. *Un. Sewer Pipe Co.*, 184 U. S., 540, 548.

In the recent case of *Bement* v. *National Harrow Company*, 186 U. S., p. 70, Mr. Justice Peckham said, in reference to a similar contention, pp. 87-88:

> "Plaintiff contends in the first place that only the Attorney-General of the United States can bring an action under the statute, (Sherman Act) excepting that by section 7 of the act any person injured in his business or property, as provided for therein, may himself sue in any Circuit Court of the United States, in the district in which the defendant resides or is found. Assuming that the plaintiff is right so far as regards any suit brought under that act, we are nevertheless of opinion that anyone sued upon a contract may set up as a defense that it is a violation of the act of Congress, and if found to be so, that fact will constitute a good defense to the action.
>
> "The first section of the act provides that 'every contract, combination in the form of trusts, or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal.' Every person making such a contract is deemed

guilty of a misdemeanor, and on conviction is to be punished by fine or by imprisonment, or both. As the statute makes the contract in itself illegal, no recovery can be had upon it when the defense of illegality is shown to the court. The act provides for the prevention of violations thereof, and makes it the duty of the several district attorneys, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations, and it gives to any person injured in his business or property the right to sue, but that does not prevent a private individual when sued upon a contract which is void as in violation of the act from setting it up as a defense, and we think when proved it is a valid defense to any claim made under a contract thus denounced as illegal."

The anomalous case decided by Judge Kohlsaat, and relied upon by the plaintiff of *Lafayette Bridge Co.* v. *City of Streator,* 105 F. R., 729, is not really applicable because it applies only to provisions in statutes by which persons outside the trust and whose contract with the trust is not tainted with any illegality may defend against any action brought by a trust, upon the ground that the plaintiff is a trust. He held that under the Illinois statutes allowing third persons to plead that the plaintiff was a trust, as a defense to the purchase price, it must first be established by direct proceeding that the trust was a trust. Inconsistent in any event as the case is on principle and authority, see

City of At. v. *C. F. & P. Co.,* 101 F. R., 900;
Ford v. *Chi. Milk Ship. Assn.,* 155 Ill., 166;
Nat'l Lead Co. v. *Grote Pt. St. Co.,* 80 Mo. Apps., 247, 265;

it has no application where, as in the case at bar, the defense is not interposed by a third person but by the party who entered into an illegal contract and the suit is on such contract. The reasoning of Judge Kohlsaat is opposed to every case already cited, to the holdings of the Supreme Court of the United States and to the cases hereinafter cited, where combinations have been held to be illegal because trusts and where agreements have been held void and non-enforceable because trust agreements.

If it be true that, it is necessary that a trust should be adjudged to be a trust in a proceeding brought by the state, before the defense can be interposed in a civil proceeding, then each and every one of those cases was wrongfully decided in which the courts did decide that the combination was a trust and that an agreement was void because a trust agreement in violation of statutes, in suits between individuals. Such a ruling would have the effect of destroying the provisions of the Sherman Act, of the Ohio Trust Law, and of most other statutes against trusts providing for recovery of damages by any person injured in business by the trust. It would make the civil rights of parties dependent, not upon the statute, not upon the rights of parties, but upon the greater or less diligence of the prosecuting or district attorneys as the case may be. Two persons having precisely the same defense or cause of action, the one would fail because the state had not yet acted, the other would succeed because the state had acted.

It is the universal rule of law that whenever a statute gives or witholds civil rights upon the existence of a given state of facts, the persons whose property may be affected by the giving or withholding of this right, have a right to have the question as to the existence or non-exist-

ence of these facts determined by the courts in a suit to enforce these rights or defenses. The suggestion of Judge Kohlsaat that in one case the evidence and pleadings may differ from those in another case and hence the result may be different, is a suggestion which may be made in all cases where many persons have similar causes of action or similar defenses, and it has never been regarded as a sufficient reason for withholding from any person a right to have the question determined on such pleadings and such evidence as he is able to present. The state courts present numerous opinions upon this subject.

The McB. & J. W. L. Co. v. *Con. L. Co.*, 9 Bull., 309, 311.
Arnot v. *P. & E. Coal Co.*, 68 N. Y., 558.
Morris Run Coal Co. v. *Brad. Coal Co.*, 63 Pa. St., 173.
Beman v. *Triquot*, 5 Sandf., 153, 156.
Martin v. *Wade*, 37 Cal., 168.

VII.

THE CONTRACT BETWEEN THE PLAINTIFF AND THE DEFENDANT, EVEN WHEN CONSIDERED SEPARATELY FROM THE AGREEMENTS BETWEEN THE MANUFACTURERS AND PLAINTIFF, WAS ONE IN RESTRAINT OF TRADE, SO AS TO DEBAR THE PLAINTIFF FROM RECOVERING FOR GOODS SOLD AND DELIVERED UNDER IT TO THE DEFENDANT.

Counsel for the plaintiff insist on contending that the gravamen of the third defense is, that the defendant was the victim of the plaintiff or trust and was not a party to the illegal agreement or combination. We beg to point out, however, that while the defendant apologizes for entering into the illegal combination on the ground that

it was forced to do so, as probably many of the manufacturers were who certainly were parties to the trust, nevertheless as has been shown, the contracts, which were entered into between the manufacturers and the plaintiff, between the jobbers and the plaintiff, and between the quantity buyers and manufacturers, were parts of one general scheme to restrain trade, prevent competition, enhance prices, to fix a standard of price to the public or consumer, etc., in violation of the Sherman Act, the New York Statutes and the Ohio Statute, commonly known as the Valentine Act, above referred to.

While the defendant admittedly was not one of the original conspirators, yet by entering, with all the other jobbers in the country, into the contracts which the original conspirators outlined for them to make, containing the express agreements with respect to prices and with respect to dealing elsewhere, it thereby became itself a part of the conspiracy.

The answer distinctly states, after setting forth in substance the various contracts entered into between the different parties, including the plaintiff and the defendant, and the plaintiff and every other jobber, and the means adopted to bring about such results, and objects sought to be accomplished thereby, the following:

> "Each and all of the provisions of said contract and agreement between said members of said combination and each other; *between said so-called vendors and said plaintiff; between said members of said combination and said plaintiff and the so-called jobbers;* between the members of said combination and trust and said plaintiff and the so-called road or quantity buyers, are each and all contrary to the provisions of the

statutes of the state of New York," etc. (Rec., p. 411).

In view of these allegations and those which precede it, it is difficult to see how the plaintiff on demurrer can deny that the defendant was a party to the illegal combination. Certainly the pleader intended to make it appear so and certainly it was. Yet ignoring the allegations of the third defense of the answer which the demurrer admits; ignoring the allegation that an agreement identical with Exhibit 2 was entered into by the plaintiff with *every other jobber* of the first, second, and third class in the United States, and that an agreement identical with Exhibit 3 was entered into by the manufacturers on every sale to every other wholesaler or "quantity buyer" who were not classed as jobbers, and that these agreements were expressly contemplated and provided for in the agreements between the manufacturers and plaintiff, and ignoring the allegations that the schedules of "list prices" and discounts attached to Exhibits 2 and 3 allowed all jobbers, wholesalers and quantity buyers, were the identical schedules fixed upon between the manufacturers and the plaintiff in their agreements (Exhibit 1) as well as all provisions as to equalizing of freights, conditions and the forms the contracts were to assume—ignoring all these most material facts—counsel for plaintiff take up Exhibit 2 as if it stood alone, was the only contract made and was a simple agreement between a vendor of wall paper and a vendee, as to the sale of a year's supply of goods.

Having thus taken the contract, and isolated it from everything else, they proceed to argue first, that its restrictions were reasonable at common law in the case of a sale of goods to be imposed by a vendor on a vendee;

second, that being reasonable at common law it was not a restraint on commerce between the states and otherwise within the terms of the state and United States statutes prohibiting such restrictions, that the statutes are not supposed to cover such cases, and third, that even if illegal the illegal provisions are severable and do not prevent the enforcement of the legal provisions.

Such an argument begs the whole question at issue. The elements ignored are the elements which, conceding all that is claimed in reference to Exhibit 2, the contract relied upon, if it stood by itself, render it illegal and unenforceable. This is true, although the defendant be considered as not a party to the general illegal scheme or combination and only a party with the plaintiff and jobber to that feature of the scheme which involved the disposition of the merchandise to which plaintiff by its contracts with the manufacturers had acquired title.

Treating the case in this narrow view, the illegality of the contract fixing the price at which defendant sold the goods, precludes a recovery from the defendant, a party to such contract, and is enforcing an illegal agreement. For, when taken in connection with the other contracts, signed by all other jobbers, wholesalers and quantity buyers—the stipulations as to prices, etc., at which they were to dispose of the goods purchased were (1) unreasonable even at common law; (2) whether reasonable or unreasonable, were in violation of the Sherman Act and the state statutes; and (3) are not severable as one of two or more promises resting on a legal consideration; but by reason of the form they take were condition precedent to any promise of the plaintiff and taint and render illegal the entire consideration by virtue of which the defendant agreed to pay *any price for the goods.*

The contracts (Exhibit 2) in the first place bound the defendant and every other jobber to buy exclusively from the plaintiff. This was disguised by the provisions that the jobber "will purchase the *entire requirements* of the jobber" up to a certain amount; but this amount is averred in the answer to have been "at least double the entire amount purchased by the jobber during the preceding year," and "more than by any possibility could be needed by such buyer" (Rec., p. 406).

In the second place as to credit limitations, deliveries, equalization of freight rates, discounts from list prices, terms of payment, settlements, dates of invoices, etc., they impose and follow the provisions of the contract between the manufacturers and the plaintiff (Exhibit 1). Then follows (Exhibit 2—Rec., p. 434) this provision, likewise in accordance with (Exhibit 1—Rec., p. 420):

> "Third. Attached hereto marked 'B' is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers, and also a statement of discounts allowed to such customers other than jobbers for quantity purchasers, together with the terms of credit and freight allowance to which such customers are entitled.
>
> "It is *an essential condition* of this agreement that the jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in Exhibit B, the intent hereof being to assure the company against the use by the jobber of this agreement to undersell the company.
>
> "The prompt performance by the jobber of the provisions of this agreement as to payment and

> *otherwise* is a *condition precedent* to exacting the continuous performance of said agreement by the company" (Rec., p. 434).

Every jobber in the United States signed this contract with plaintiff. No jobber could get goods *at all* from anybody unless he did.

Every wholesaler who was not a jobber but was a "quantity buyer" signed at the time he purchased any goods from a manufacturer, who had agreed with the plaintiff so to sell said goods, a contract (Exhibit 3—Rec., p. 447), containing a similar provision:

> "In consideration of your having sold us wall paper, etc., at list prices and at quantity discounts as per following schedule (here follows schedule) we hereby agree not to sell any of such goods to others on terms better or more favorable than those specified in the above schedule or lower than said list prices, and our faithful performance of this agreement is *condition precedent* to the filling of our order.
>
> "The intent hereof is to protect you fully against being undersold by us among customers to whom you do not allow quantity discounts."

In the face of these contracts and the allegations of the answer in reference thereto, how idle it is to treat this as a case where a vendor, to protect his business, imposes a reasonable restraint on the vendee when he sells him property, real or personal?

What does it avail to cite the contract between Connolly and the Union Sewer Pipe Company, which contained similar provisions, when those provisions were not relied upon as a defense, not pleaded as such, no showing made that any other purchaser signed a similar contract, no alle-

gation made that it was in pursuance of a plan to create a monopoly, fix prices, restrain trade, etc., and when the Supreme Court in its opinion, not only *does not mention it*, much less pass upon it?

Why quote part of the opinion in *U. S.* v. *Addyston Pipe & Steel Co.*, 85 F. R., 271, which refers to contracts at common law which were reasonable, and ignore what Judge Taft especially pointed out as a distinguishing feature of such cases. In the foregoing cases, etc., "Where," says he, page 290—

> "Such relations exist between the parties, as already stated, restraints are usually enforceable if commensurate only with the reasonable protection of the covenants in respect to the main transactions affected by the contract. But, in recent years, even the fact that the contract is one for the sale of property or of business and good will, or for the making of a partnership or a corporation, has not saved it from invalidity *if it could be shown* that it was only part of a plan to acquire all the property used in a business by one management with a view to establish a monopoly. Such cases go a step further than those already considered. In them the actual intent to monopolize must appear. It is not deemed enough that the mere tendency of the provisions of the contract should be to restrain competition. In such case the restraint of competition ceases to be ancillary, and becomes the main purpose of the contract, and the transfer of property and good will, or the partnership agreement, is merely ancillary and subordinate to that purpose." (Citing numerous cases.)

The case at bar is like the case of *Cravens* v. *Carter-Crume Co.*, 92 F. R., 479. It appears from that case, p. 483, that—

> "The trial judge held at the conclusion of the evidence, that the contracts between the plaintiff, the National Mercantile Company and the Carter-Crume Company *were not* standing by *themselves* unlawful, but that when taken in connection with the other facts which had been shown, it appeared that they formed part of an unlawful combination in restraint of trade; that they were therefore contrary to public policy and could not be enforced. He therefore directed a verdict for defendant."

This holding of the court below was affirmed by this court, although the plaintiff had fully executed the contract on his part.

Two cases in California fully bring out the distinction sought to be enforced in this case.

Pacific Factor Co. v. *Adler*, 90 Cal., 110:

> "A contract by the terms of which the defendant agreed to give to the plaintiff the exclusive sale of grain bags or burlaps, up to a specified quantity, to be under the defendants' control for a specified period, and agreed to accept for them the average price received by the plaintiff for all grain bags or burlaps sold by him, and the plaintiff agreed to sell them for a specified commission and to be bound to sell a specified quantity of them, is not upon its face void as being in restraint of trade or against public policy; but if it be shown that such contract formed part of a scheme of the plaintiff to establish a monopoly in grain bags, agreement is void."

So held in action for damages for failure to deliver bags as agreed.

Santa Clara Mill & Lumber Co., v. *Hayes*, 76 Cal., 387.

Syllabus:

"The plaintiff and the defendants, who were each manufacturers of lumber, entered into a contract by the terms of which the defendants agreed to make and deliver to the plaintiff during the year 1881, two million feet of lumber at $11 per thousand feet, and further agreed not to manufacture any lumber during such period for sale within a specified territory, except under the contract and to pay the plaintiff $20 per thousand feet for any lumber manufactured and sold to parties other than the plaintiff. Similar contracts were made by the plaintiff with other lumber dealers, and its sole object and consideration in entering into such contracts was to form a combination for the purpose of increasing the price of lumber, limiting the supply, and giving it the control of the lumber market within the territory specified.

"*Held:* That the contract was in restraint of trade, it being indivisible was involved in its entirety."

Page 392:

"Plaintiff had an undoubted right to purchase any or all of the lumber it chose, and to sell at such prices and places as it saw fit, but when as a condition of purchase it bound its vendor not to sell to others under a penalty, it transcended a rule, the adoption of which has been dictated by the experience and wisdom of ages as essential to the best interests of the country and as necessary to the protection alike of individuals and legitimate trade."

Page 393:

> "It is claimed by appellant that the contract is divisible and the first part (*i. e.*, to sell) can stand though the latter be illegal. If the whole vice of the contract was embodied in the promise of the defendants not to sell lumber to other persons, the illegality would be in the promise alone and it might be contended with great force that this promise was divisible from the agreement to sell. Under the findings of the court, however, the illegality inheres in the consideration.
>
> "The very essence and main-spring of the agreement, the illegal object, was to form a combination, etc. * * * The good can not be separated from the bad or rather the bad enters into and permeates the whole contract so that none of it can be said to be good and, therefore, the subject of an action."

See also:

Strauss v. *Amer. Pub. Assn.*, 85 App. Div. (N. Y.), 446, 450; affirmed 177 N. Y., 473.

Detroit Salt Co. v. *Nat'l Salt Co.*, 134 Mich., 103, 120.

Frick v. *Granite Co.*, 187 Mo., 244, 269:

> "If this contract in suit stood alone it would undoubtedly be sustained, but it does not stand alone. It was one of 5 others all of which were links in the illegal combination which rendered them illegal."

The case of *Bement* v. *National Harrow Co.*, 186 U. S., p. 70, clearly brings out the point for which we are now contending. In that case the licensee of certain patents owned by the National Harrow Company sought to avoid

the terms of his license upon the ground that certain provisions therein, which affected the sale and prices at which the merchandise was to be sold, were in violation of the Sherman Act.

The case came to the Supreme Court on error to the Supreme Court of the State of New York and there had been certain findings of fact by the referee in the court below as to the validity of the license contract, but there had been no finding of fact that any other persons than the defendant had entered into such contracts or contracts of a similar kind.

Nevertheless in the Supreme Court the plaintiff in error, defendant below, attempted to rely upon the existence of similar contracts with other licensees as showing an illegal combination within the act of Congress. The Supreme Court held that it was not at liberty to go behind the findings of fact of the referee in the state court or from the record find facts in addition to those found by the referee; but, on the contrary, had to pass upon the case as if the license contracts referred to in the opinion and record as Exhibits A and B were the only contracts of that sort in existence.

So viewing them the court held in effect that, as the object of the patent laws was a monopoly any conditions not in their very nature illegal imposed by the patentee on the licensee would be upheld by the courts and could not be construed as being within the purview of the Sherman Act.

Nevertheless the court was very careful to refrain from stating what would have been its decision had the other facts urged by the plaintiff in error been found to be true by the referee, and carefully refrains from passing upon the effect of such findings if they had been made. On the

contrary, the clear intimation from a reading of the opinion is that if the facts urged by the plaintiff in error had been properly before the court the conclusions reached by the court would have been different. The court says, page 85:

> "The omission of the referee to find from the evidence that the contracts A and B were a continuation of former contracts held to have been void, and that there were in fact other manufacturers of harrows who had entered into the same kind of contracts with plaintiff as those denominated A and B, and that there was a general combination among the dealers in patent harrows, to regulate the sale and prices of such harrows, furnished no grounds for this court to assume such facts. The contracts A and B are to be judged by their own contents alone and construed accordingly."

And again, page 87:

> "In the absence of any finding as to the escrow agreement having been signed by others, it must be regarded as unimportant, and we are brought back to the question whether those contracts or licenses, A and B, irrespective of any contracts not found by the referee as in any way connected with, or forming a part thereof, are void as a violation of the act of Congress."

Finally after discussing the nature of a patent monopoly and the application of the Sherman Act and the decisions of the Supreme Court thereunder, to rights acquired from a patentee, the court concludes its opinion as follows, page 94:

> "It must, however, be conceded that the escrow agreement above set forth looks to the signing,

by the parties mentioned therein, of contracts similar to those between the parties to this suit, designated A and B, and containing like conditions relating to the patents respectively, owned by such parties. But there is no finding by the referee that such contracts were in fact entered into by those other parties nor that they constituted a combination of most, if not all, of the persons or corporations engaged in the business concerning which the agreements between the parties to this suit were made. If such similar agreements had been made, and if, when executed, they would have formed an illegal combination within the act of Congress, we can not presume for the purpose of reversing this judgment, in the absence of any finding to that effect, that they were made and became effective as an illegal combination. *As between these parties, we hold that the agreements A and B actually entered into were not a violation of the act. We are not called upon to express an opinion upon a state of facts not found.*"

In the case at bar under the allegations of the third defense, the contracts—Exhibits 2 and 3—were not only entered into with the defendant but also with all other wholesale dealers and quantity buyers of wall paper and constituted a combination together with the manufacturers who had entered into the contracts (Exhibit 1) with the plaintiff of most, if not all, of the persons engaged in the business, viz., wall paper business, concerning which the agreements between the parties to this suit were made. In other words, the elements which are lacking in the case of *Bement* v. *The National Harrow Company*, by reason of the findings of the referee are present before this court

by virtue of the allegations of the third defense and the admission by the plaintiff of their truth.

It is this distinction that differentiates this case from that and also, even at common law, distinguishes the case at bar from all such cases as are set out in the brief of counsel, such as:

Amer. Strawboard Co. v. *Haldeman P. Co.*, 83 F. R., 619.
Hitchcock v. *Anthony*, 83 F. R., 779.
Navigation Co. v. *Winsor*, 20 Wall., 64.
Dunlap v. *Gregory*, 10 N. Y., 241.
Hodge v. *Sloan*, 107 N. Y., 244.

In all of these cases as well as the other cases, the restrictive covenant was held to be reasonable and not to go beyond or to have any other purpose than the legitimate protection of the vendor. There was no evidence that there was any combination to form a monopoly or enhance prices, or restrain trade. No one was party to the contract except the vendor protecting his own property.

The facts which appear in the third defense, however, are entirely different and as a result even at common law as held in the California cases, above cited, this contract and its respective provisions were illegal and void. Being illegal and void, while at common law they furnished no basis for a cause of action, or a criminal prosecution, they nevertheless constituted a defense to any suit brought to enforce them.

U. S. v. *Addyston Pipe & Steel Co.*, 85 F. R., 271-279.

In the brief for plaintiff in error, stress is laid upon the decision of *Park & Sons Co.* v. *National Wholesale Druggists Assn.*, 175 N. Y., 1, and similar cases (brief for

plaintiff in error, p. 49), from which it is contended that the courts in New York at least have held to be legal provisions similar to those in the contract between plaintiff and defendant even when made between combinations of manufacturers or dealers.

Park & Sons case, however, and other similar cases rest upon a foundation which has no application to the case at bar. As said by Judge Haight in the quotation from plaintiffs brief at page 51:

> "We must bear in mind that the goods are covered by patent rights and trade-marks, which give the proprietors the exclusive right of specifying prices at which the articles shall be sold, and following this, the right also to require dealers to maintain the prices specified."

And it was said by Chief Judge Parker in that part of his opinion quoted at page 53 of the brief:

> "It must be borne in mind steadily that it is settled by authority that the proprietor of patent medicines has the right to fix the price at which his articles shall go to the consumer, and a druggist who takes his article for sale under an agreement that he will maintain the price is liable to respond in damages if he violates the contract."

Counsel at page 55, notwithstanding these statements by the judges rendering the opinion of the court, claim that the court did not base its decision upon the theory that the goods involved in that case were proprietary articles.

That the case, however, is rested entirely upon that theory is conclusively shown by the later case, decided by the same court (*Strauss* v. *Amer. Pub. Assn.*, 177 N. Y., 473, 476), in which a similar combination of book pub-

lishers was held to be illegal although ostensibly limited to the fixing of prices for copyrighted books, when it appeared that, in reality, it was used for enforcing the sales at fixed prices of books not copyrighted. In that case it was said by Chief Judge Parker, at page 476, after quoting from the opinion of Mr. Justice Peckham, delivering the opinion of the court in *Bement* v. *Nat'l Harrow Co.*, 186 U. S., at page 91:

> "That reasoning is employed as to patent rights. It is equally applicable to copyrights, the protection of which was perhaps the leading object of the association and agreement attacked in this action. And it points to the principle underlying the decision in the Park & Sons Co. case (175 N. Y., 1) upon which defendants apparently rest their claim that the judgment of the Appellate Division should be reversed. But there is a feature in this case not to be found in that one, and which requires a different judgment than the one rendered therein. * * * A combination creating a monopoly of the sale of books *not* protected by copyright offends against the law of this state as much as if it related to blue stone (164 N. Y., 401) or to envelopes (166 N. Y., 292) and according to this complaint, which must be accepted as true on this review, such an outcome is not only possible but probable. But it is not of moment whether such a result is probable or not, for the test to be applied is, What may be done under the agreement?"

See, also, for the same distinction—

> *Rubber Tire Wheel Co.* v. *Milwaukee Rubber Works Co.*, 142 Fed., 531.

While we thus submit, in answer to the contentions of plaintiff, that the contract between plaintiff and defendant

was illegal, considered simply as part of a scheme between the plaintff and all the jobbers of the country, because of the features in this and all other contracts with jobbers to enhance prices and enforce plaintiff's monopoly, yet we urge that our main contention be not lost sight of, that these contracts were but part of a greater scheme including the manufacturers of ninety-eight per cent. of the wall paper of the country, under which the plaintiff was but a cover for the illegal designs of the manufacturers, who were the real parties to the contracts with the jobbers. When the defendant contracted with the plaintiff to uphold the enhanced prices, it, in fact, contracted with the combined manufacturers, who did, in fact, sell it the goods pursuant to the real agreement or conspiracy, and defendant, in common with all other jobbers, thereby made itself a party to the conspiracy and undertook to further and carry out its illegal ends.

VIII.

Even if the Restrictions Contained in the Contracts were Reasonable at Common Law, yet, under the Federal and State Statutes, whether Reasonable or Unreasonable, they were Void and Non-enforceable.

The contracts were signed in New York, and provided for the delivery of the goods f. o. b. cars at New York or Philadelphia, or at any other place the plaintiff or manufacturers chose, subject, however, in the latter event to an equalization of freights to either of said cities.

The goods were to be shipped to the jobbing houses of the different jobbers or wholesalers, and in the case of the defendant, to Cincinnati, Ohio. From that point they

were to be sold by the defendant in Ohio and other states of the Union.

A provision, therefore, that no wall paper should be purchased from anyone but the plaintiff and should be sold when purchased only at certain prices, which provision was applied and enforced against every purchaser of wall paper, systematically and uniformly, certainly was a contract in restraint of trade or commerce among the several states, and an attempt to monopolize a part of the trade or commerce among the several states, and, so far as the contract fixed the prices at which goods purchased by the defendant were to be sold in Cincinnati and other cities, for delivery in Ohio and such other states, came within the Sherman Act, as well as the Ohio statute commonly known as the Valentine Act (93 Ohio Laws, p. 143).

The contract also came within the New York statute, as it was entered into and in part performed there, and the New York statute is like the Federal statute.

It is not claimed that this contract did not, to some extent, restrain commerce between the states. It certainly did do so, and it had also for its object the creations of restrictions in trade, the increasing of the prices of merchandise, the fixing of a standard, or figure, whereby the price of merchandise to the public or consumer should be controlled or established, the prevention of competition and the other purposes denounced in the Ohio statute.

The contention, however, is made, that these statutes are not intended to prevent reasonable restrictions and that, therefore, the restrictions in the contract are to be upheld, despite the State and Federal prohibitions against contracts whose object and purpose are such as those above stated. Fortunately this matter has been settled by the adjudication of the Supreme Court and this court.

If the tendency of these provisions is to restrain commerce or accomplish any of the purposes denounced in the statute, the motive in entering into them or the reasonableness of the provisions is immaterial.

In *C. & O. Fuel Co.* v. *U. S.*, 115 F. R., 610, at page 619, it is said:

> "In the exercise of this right, Congress has seen fit to prohibit all contracts in restraint of trade. It has not left to the courts the consideration of the question whether such restraint is reasonable or unreasonable, or whether the contract would have been illegal at the common law or not. The act leaves for consideration by judicial authority no question of this character, but all contracts and combinations are declared illegal if in restraint of trade or commerce among the states. *U. S.* v. *Trans-Missouri Freight Assn.*, 166 U. S., 290; *U. S.* v. *Joint Traf. Assn.*, 171 U. S., 505; *Addyston Pipe & Steel Co.* v. *U. S.*, 175 U. S., 211."

See, also,

U. S. v. *Hopkins*, 82 F. R., 529.
U. S. v. *Coal Deal. Assn.*, 85 F. R., 252, 262, 264.
U. S. v. *Addyston P. & S. Co.*, 85 F. R., 271, 278, 291.
U. S. v. *C. & O. Fuel Co.*, 105 F. R., 93.

The only question that is open in any case is as to whether or not the possible effect of the contract is to restrain commerce or to monopolize any part of the commerce between the states, as by fixing prices, preventing competition, or fixing a standard of price, etc., all of which are interdicted by both Federal and State statutes. From what has been heretofore said, that the necessary effect of the combination in question, and the contracts entered into

by the plaintiff with the different jobbers and wholesalers, was to do these things which are forbidden, can not be questioned.

IX.

The Illegality is not Partial and Separable, but Vitiates and Invalidates the whole Contract.

Counsel for plaintiff in error, while treating the contract between plaintiff and defendant as one wholly separate and independent contract between one manufacturer or vendor, and one customer, contend that, even if certain stipulations in that contract prohibiting the defendant from selling any of the merchandise purchased from the plaintiff at lower prices than those specified in the schedule annexed, be illegal, the only effect of such illegality is to nullify that provision and not to prevent plaintiff from recovering on the separable promise of the defendant to pay for the goods which he actually received and kept. In support of this contention the familiar doctrine is invoked that, where one of two promises given upon one consideration is illegal and the other promise and the consideration are legal, the legal promise can be enforced by the person who has furnished the legal consideration and who in the action exacts the performance of only that which is legal, waiving the performance of that which is illegal.

This principle is sought to be applied by contending that in consideration of certain merchandise supplied by the plaintiff, the defendant promised, among other things, (1st) to buy a certain amount of merchandise from the plaintiff; (2d) to pay certain prices therefor; (3d) not to sell the same at less than certain fixed prices; and that although number 3 may be void, yet as the consideration

for 1, 2 and 3 was valid, and 2 was also valid, 2 can be enforced against the defendant. While not disputing the principle sought to be invoked, its application to the case at bar can not be supported for several reasons: In the first place, as said in the case of *Santa Clara Mill & Lumber Co.* v. *Hayes*, 76 Cal., 387, the illegal object, the very essence and main-spring of the agreement, was to carry out a combination, and the good can not be separated from the bad, that is, the illegal object enters into and permeates the whole contract so that none of it can be said to be good; in the second place, the contract, on its face, shows the consideration for all the promises of the defendant to have been illegal. While agreeing to sell the entire requirements of the defendant in the business of selling wall paper for the year ending July 1st, 1899, at certain prices, less discount, it did so only upon the "essential condition" or "condition precedent" that the defendant would not, directly or indirectly, sell, or offer for sale, any of the merchandise so purchased, below certain standard prices, and agreed to supply wall paper to the defendant only upon the condition precedent that the defendant would continuously perform that contract,

The goods were, therefore, furnished for an illegal use. Defendant, under the agreement, was to use them for the illegal purpose of carrying out the conspiracy of enhancing prices to the public at large for wall paper. In the case of hiring a hall when it is known that it will be used for an illegal meeting, or of selling goods if the vendor knows that the purchaser means to apply them to an illegal or immoral use, the agreements are void, though containing no promise in itself illegal. There was nothing illegal in the contract between Harriman and the Northern Securities Co. standing alone, but it was part of an illegal

scheme to which Harriman lent himself and therefor he was *in pari delicto* and not permitted to recover the subject-matter of the contract after its illegality was determined.

Harriman v. *Northern Securities Co.*, 197 U. S., 244, 295.

In many of the contracts which have been adjudicated as being void, there is nothing illegal in the promise or undertaking of either party when viewed simply by itself. The addition to such contracts of an illegal promise to do the very prohibited thing contemplated, would not render the balance of the contract enforceable, by the application of the doctrine of divisible covenants. Suppose, for instance, in *Pearce* v. *Brooks*, L. R., 1 Exch. 213, which was the case where the contract for the hiring of a brougham to a prostitute was held void, merely because the owner, the plaintiff, must have known that it would be used in furtherance of her illegal pursuits, that the defendant had expressly agreed (a) so to use it, and (b) to pay for it. No one would consider that the plaintiff could sue on the covenant (b) and disregard the covenant (a), yet they are apparently distinct and separable. The mere fact that the contract was entered into for the furtherance of an object prohibited by law vitiated the whole consideration irrespective of any particular covenants.

The legal effect, therefore, of this contract in the case at bar, was to render the consideration for all the defendant's promises illegal, for the promise of the plaintiff to sell paper to the defendant, which was the consideration for the plaintiff's promise to buy the paper and to pay certain prices therefor, was made upon a condition embodied in it which was illegal. The plaintiff clearly said: upon

condition that you will not sell any goods that I supply you below certain prices, I will supply you with the goods.

When it is remembered that the purpose of the provision was to enhance and fix prices, and that it was intended and was, in fact, carried out, that these restrictions entered into every other contract, made with every other purchaser of wall paper, the "essence and main-spring," as the California case expresses it, of the agreement, it is clearly shown to have been the maintaining of prices for wall paper at an artificial point in restraint of commerce, and to the prevention of competition.

The element of illegality, therefore, is involved in the consideration which passed from the plaintiff, as well as in one of the promises made by the defendant. The illegal stipulation is enforced by the enforcement of any of the promises of the defendant, since those promises are only supported by the illegal stipulation.

The language of Justice Holmes, in the opinion in *Cincinnati Packet Co.* v. *Bay*, 200 U. S., 179, 185 (p. 89 plaintiff's brief), recognizes the distinction that we are urging here. He says there that the covenant relied upon to make the transaction illegal " is not the covenant sued upon. It is not declared to enter into the consideration of the sale," and he speaks of it again as a "subordinate undertaking of the buyer." In the contract at bar the illegal provision is no subordinate undertaking but it is expressly declared by the contract to be not only a part of the consideration for the sale, but the condition upon which alone goods could be had.

Finally there is a well recognized exception to the principle invoked on behalf of the plaintiff in error and now under consideration, namely: that where one of the promises is illegal or objectionable, because it is for the per-

formance of an immoral or criminal act, it is not severable so as to render the other promise, or promises, enforceable, but in such cases it will taint the entire contract and render it unenforceable in all its parts.

Since this brief has been in the hands of the printer our attention has been called to a consideration of this very subject by Professor W. P. Rogers, Dean of the Cincinnati Law School, in an article published in the Ohio Law Reporter at Cincinnati, October the twenty-second, 1906, being No. 28 of Vol. IV of that publication. The article is found at page 463 and we call especial attention to pp. 466 *et seq.* of that article.

Reference is therein made to two cases, among others, decided by the Supreme Court of the United States, namely: *Gelpcke* v. *City of Dubuque*, 1 Wall., 221, and *U. S.* v. *Bradley*, 10 Peters, 360, where the distinction which we have just noted is recognized.

If, as the plaintiff contends, the sole illegality of the contract between plaintiff and defendant, lies in the covenant not to sell except at trust prices that covenant is criminal in its nature, because it is the promise whereby the defendant makes itself a party to the illegal combination and agrees to carry out the purposes of that illegal combination, acts which are made criminal by the statutes now under consideration. It, therefore, falls directly within the exception to the principle invoked as it is a promise to perform a criminal act and in such a case as pointed out the good can not be separated from the bad.

X.

The Contract in Question in this Suit is within the Prohibitions both of the Federal and the State Statutes.

While there is a decided difference in the verbiage of the Sherman Act, when compared with the New York statutes and the Ohio statute against monopolies and trusts, we regard these differences as entirely immaterial. The purpose and intent of each statute is practically the same in prohibiting contracts and combinations of the character involved in this suit.

The Sherman Act prohibits every contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce. Any person who shall make any such contract or engage in any such combination or conspiracy, or shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce, shall be deemed guilty of a misdemeanor.

The acts of New York and Ohio prohibit the same acts when applied to matters within their jurisdictions. It is true that the New York statute is somewhat broader in expression in that it penalizes every person "who shall make, or attempt to make, or enter into any such contract, agreement, arrangement or combination, or who within this state shall do any act pursuant thereto," and the Ohio statute similarly prohibits and penalizes any agreement by which two or more persons "shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation, between them

or themselves and others, so long as to directly or indirectly, preclude free and unrestricted competition."

The expressions quoted from the New York law and the Ohio law may more pointedly manifest the intention of the Legislature with respect to the facts set up in the answer, than does the Sherman Law, because the state laws go more fully into detail. But the broad provision of the Sherman Act, as construed by the courts in the decisions which we have already cited, are quite as effective as are the more particular prohibitions of the states in reaching any scheme which the cupidity of man or the ingenuity of counsel has so far been able to devise for the purpose of restraining trade or commerce among the states by any of the methods particularized by the state Legislature. There can be no doubt that the preventing of unrestricted competition by fixing, or keeping up, the price of any article or commodity of trade, particularly when coupled with a refusal to deal with, or sell to, one violating the provisions of such an agreement, is a restraint of trade or commerce and hence, if affecting interstate commerce, within the prohibition of the Sherman Act.

Addyston Pipe & Steel Co. v. *U. S.*, 175 U. S., 211, 214.
Montague v. *Lowry*, 193 U. S., 38.
Loder v. *Jayne*, 142 F. R., 1010, 1014.

Since the answer was drafted in this case the later decisions of the courts have made it quite plain that such combinations and conspiracies as are set up in the answer do restrain interstate commerce.

The case just cited, of *Montague* v. *Lowry*, 193 U. S., 38, very forcibly illustrates the extent of the prohibitions of the Sherman Act, and in view of that decision, there can

be no doubt of the applicability of that law to the facts relied upon.

It is doubtless true, as was decided by the Circuit Court of Appeals for the Eighth Circuit, in *Hadley Dean Plate Glass Co.* v. *Highland Glass Co.*, 143 F. R., 242, that state anti-trust statutes can not affect a contract between a manufacturer in one state and a dealer in another state, for the manufacture in the one and the delivery in the other, of an article of commerce, as the Sherman Law alone applies to those facts.

Nevertheless, when, by the terms of such a contract as there is in this case, a prohibition is attempted against unrestricted acts of ownership by the purchaser of goods, after they have entered into his possession and cease to be articles of interstate commerce, it would seem that the prohibitions of the state statute then apply. If the agreement involved in this suit were valid it would prevent the defendant selling below trust prices in Ohio where a part of the goods were intended to be sold by it, preventing, in other words, the free and unrestricted play of the laws of supply and demand and the natural competition of commerce within the state.

Certainly it must be within the powers of the state to prohibit such agreements, and, unquestionably, they are prohibited by the language of the Valentine Act, as previously quoted:

> "To make or enter into or execute or carry out any contracts, obligations or agreements * * * not to sell, * * * any article or any commodity * * * below a given standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article * * * at a fixed or graduated figure, or by which they

> shall in any manner establish or settle the price of any article * * * so as to directly, or indirectly preclude a free and unrestricted competition," etc.

In the Hadley Dean Plate Glass Co. case the defense was limited to the fact that the plaintiff was an illegal combination, and the defense was made upon a contract solely for the manufacture in one state of a commodity to be delivered in another. In the case at bar, the defense is based upon the attempt to control the defendant in the sale of goods after it had received them, which stipulation in its contract was made as a part of a general scheme between substantially all the manufacturers and with every other jobber in the country, so that it was clearly, so far as the goods which were to be resold in Ohio by the defendant were concerned, an attempt to fix, by agreement, the prices of such goods in restraint of trade and commerce in Ohio. So far as the goods were to be resold by the defendant in other states than Ohio, it may be that the decision of Hadley Dean Plate Glass Company is applicable and only the Sherman Law applies.

In reference to the contention on behalf of plaintiff, that an act of the Legislature of the state where the contract is made, which declares the same to be illegal can not be enforced elsewhere, we beg to submit that the two cases cited upon that point by plaintiff do not at all support the proposition. On the other hand, the provisions of such legislation have been enforced in other states, as for example, a provision of the Penal Code of New York, which is still in force, and which is applicable to this controversy, was given effect by the Supreme Court of Pennsylvania, in *Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. St., 173.

XI.

The Gist of the Arguments.

If we assume the illegality of the combination between the manufacturers, including the formation of the plaintiff company, the difference in position between the plaintiff and defendant may be thus summarized:

On behalf of plaintiff it is contended, that plaintiff, having once acquired a monopoly, it could make any contract with respect to the subject of that monopoly that any dealer or manufacturer might lawfully make with respect to his product; that it is lawful for a manufacturer to require a purchaser from him to sell only at fixed prices and buy no where else, and that a manufacturer can even require such agreements from all persons who buy from him. Hence, it is argued, it was lawful for the plaintiff to make the contract which it did with the defendant.

It is further contended, that, even if there be any illegality in the contract, it is only in that portion of the contract requiring the defendant to sell at fixed prices, and that that clause is severable, may be disregarded and the rest of the contract enforced.

On behalf of the defendant, it is contended, that none but those having a monopoly recognized by the law, as in patented or copyrighted articles, or those made by a secret process, can legally require all purchasers to maintain prices, and that it is illegal for anyone else, particularly for anyone who has illegally obtained a monopoly, to extend and enforce that monopoly by requiring all its customers to sell only at fixed prices, on penalty of not otherwise being able to obtain goods. Such agreements made, by such illegal possessors of a monopoly, with all jobbers are in direct restraint of commerce.

In those cases cited for plaintiff in this connection which do not relate to patented articles, or other articles legally monopolized, as in *Whitwell* v. *Cont. Tob. Co.*, 125 F. R., 454, and *Phillips* v. *Iola Co.*, 125 F. R., 593, it is expressly declared as a reason for the decisions, that the vendors did not have a monopoly of their respective products. Agreements, whereby competition between all the wholesale dealers in a commodity not legally monopolized, is annulled, and the prices asked by them are fixed or enhanced, are as much in restraint of trade as similar agreements between manufacturers.

(2) The contract between the plaintiff and defendant, which is in question in this suit was not the independent contract of the plaintiff nor was it made by it after the acquisition of the commodity in an honest effort to dispose of those goods. The goods, in reality, never were the goods of the plaintiff, but were sold to the defendant directly by the manufacturers and through their own sales organizations, using the name of the plaintiff and directing payments to be made to it as a device to cover their illegal agreements in restraint of trade. The agreement in question, between the plaintiff and defendant, was planned before even the plaintiff was formed, as a part of the conspiracy in restraint of trade between the manufacturers, who realized that in order to keep up their own enhanced prices they must ensure the wholesalers against competition on the high level of prices which they established.

Plaintiff was formed with a nominal capital, for the purpose of making these contracts with defendant and all other jobbers. These contracts made by the defendant and all other jobbers were in reality made with all the manufacturers in the combination as a part of the scheme and bound the jobbers to deal only with those

manufacturers, and as a condition precedent to their getting goods, bound them to sell at the enhanced prices fixed by the combination. The agreement was, therefore, a part of the illegal scheme, made in carrying out and in furtherance of its design.

The plaintiff's argument altogether ignores those facts which are pleaded and admitted.

The language of Lord Kenyon, in *Booth* v. *Hodgson*, 6 T. R., 405, 408, and quoted in *McMullen* v. *Hoffman*, 174 U. S., 631, 656, is particularly applicable to the position assumed by the plaintiff's counsel. Lord Kenyon observed that it seemed to be admitted by counsel for plaintiff—

> "That if the whole case were disclosed to the court, there was no foundation for the demand. They say to the court, 'suffer us to garble the case, to suppress such parts of the transaction as we please, and to impose that mutilated state of it on the court as the true and genuine transaction, and then we can disclose such a case as will enable our clients to recover in a court of law.' Such is the substance of this day's argument. It is a maxim in our law that a plaintiff must show that he stands on a fair ground when he calls on a court of justice to administer relief to him."

(3) When all the facts are taken into consideration, there is no room for the application of the principle of divisibility of covenants. The ground for refusing to enforce the contract that the whole purpose and consideration of the contract was illegal, because made as an inseparable part of an illegal scheme and in furtherance and execution of it.

We respectfully submit, that on consideration of all the facts pleaded, the demurrer to the third defense was properly overruled.

MORISON R. WAITE,
ORRIS P. COBB,
HARLAN CLEVELAND,
Counsel for Defendant in Error.

APPENDIX.

(1) SHERMAN ACT.

The provisions of the Sherman Act, being the statute of July 2d, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," Twenty-sixth Statute, 209, so far material is here printed for convenience of reference:

"SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine, not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

"SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in re-

strain of trade or commerce in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such territory or territories and any state or states or the District of Columbia, or with foreign nations, or between the District of Columbia and any state or states or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

(2) New York Statute.

The New York statute in existence at the time the combination was formed, and at the time of the sale of the most of the goods, was Chap. 383, of the Acts of New York, 1897, which became a law May 7, 1897. This act was amended by Chap. 690, of the Laws of 1899, which became a law May 25, 1899. There is no change, however, in Sections 1 and 2 of the amended Act from Sections 1 and 2 of the Act of 1897. These sections are the same in each act; are those which define the combination in restraint of trade and fix a penalty, and are the only ones material in this controversy. They are as follows (Acts N. Y. Chap. 690, Laws 1899):

"Section 1. Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use

is or may be created, established, or maintained, or whereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby, for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade, or occupation, is or may be restricted or prevented, is hereby declared to be against public policy, illegal and void.

"SEC. 2. Every person or corporation, or any officer or agent thereof, who shall make, or attempt to make or enter into any such contract, agreement, arrangement or combination, or who, within this state, shall do any act pursuant thereto, or in, toward, or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and, on conviction thereof, shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both." * * *

(3) OHIO STATUTES.

The Ohio Act, known as the Valentine Act, and applicable to this controversy, is that of April 19, 1898, 93 O. L., 143. The provisions of that act material to this controversy, are these:

"SECTION 1. *Be it Enacted by the General Assembly of the State of Ohio.* That a trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations, or associations of persons, or of any two or more of them for either, any or all of the following purposes:

"1. To create or carry out restrictions in trade or commerce.

"2. To limit or reduce the production, or increase, or reduce the price of merchandise or any commodity.

"3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

"4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state.

"5. *To make or enter into or execute or carry out any contracts*, obligations or agreements of any kind or description, *by which they shall bind or have bound themselves not to sell*, dispose of or transport *any article or any commodity or any article of trade*, use, merchandise, commerce or consumption, *below a common, standard figure or fixed value*, or by *which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others*, so as to directly, or indirectly, preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein

is declared to be unlawful, against public policy, and void.

"SEC. 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty ($50) dollars nor more than five thousand ($5,000) dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

"SEC. 8. That any contract or agreement in violation of the provisions of this act, shall be absolutely void and not enforceable either in law or equity.

"SEC. 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state."

The constitutionality of the Ohio law has been twice sustained by the Supreme Court of the state—

State, ex rel Monnett, v. *Buckeye Pipe Line Co.*, 61 O. S., 520.

State v. *Gage*, 72 O. S., 210.

Supreme Court of the United States

PETITIONER'S POINTS

Supreme Court of the United States,

OCTOBER TERM, 1906.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

against

THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

No. 582.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitioner's Points.

The history of this case and the nature of the questions involved are stated with sufficient clearness in the accompanying petition.

In this brief, we shall strive to indicate that the case is one which, under the established rules of this Court, should be reviewed by it, and that the legal propositions presented are of a character

which should be solved by an authoritative determination by this tribunal.

POINTS.

I.

This cause presents for consideration important phases in the law relating to contracts, which are alleged to be in restraint of trade, and in violation of the Sherman act, as to which the public interest requires a prompt adjudication here, on account of their fundamental character and the serious consequences with which they are fraught.

(1) The case directly calls for a definition by this Court of the scope and effect of its decision in *Connolly* v. *Union Sewer Pipe Company, 184 U. S., 540,* which the petitioner claims to be decisive of this case, but which it is believed the courts below have sought to limit and practically to overrule.

(2) It involves the question, as to whether the vendees of a so-called trust can, for the purpose of defeating a recovery by the alleged trust for goods sold and delivered, treat themselves as members of the trust.

(3) It also involves the question, as to whether a covenant by the purchaser of merchandise, that

he will not sell the goods purchased on terms better or more favorable than those specified in the contract, is in restraint of trade.

(*a*) Incidentally the question will arise, whether such a covenant, if in restraint of trade, is unreasonable.

(*b*) This in turn brings up the question, as to whether or not this Court has finally and definitely decided that the Anti-Trust Act includes all contracts, reasonable or unreasonable, in restraint of interstate trade.

It is believed that the utterance of Mr. Justice Brewer in *Northern Securities Company v. United States, 193 U. S., 360,* indicates that the question is still an open one, since he says:

"First, let me say that while I was with the majority of the court in the decision in *United States v. Freight Association, 166 U. S., 290,* followed by the cases of *United States v. Joint Traffic Association, 171 U. S., 505; Addyston Pipe & Steel Company v. United States, 175 U. S., 211,* and *Mantague & Co. v. Lowry, 193 U. S., 38,* decided at the present term, and while a further examination (which has been induced by the able and exhaustive arguments of counsel in the present case) has not disturbed the conviction that those cases were rightly decided, I think that in some respects the reasons given for the judgments cannot be sustained. Instead of holding that the Anti-Trust Act included all contracts, reasonable or unreasonable, in restraint of interstate trade, the ruling should have been that the contracts there presented were unreasonable restraints of interstate trade, and as such within the scope of the act. That act, as appears from its title, was leveled at only 'unlawful restraint and monopolies.' *Con-*

gress did not intend to reach and destroy those minor contracts in partial restraint of trade which the long course of decisions at common law had affirmed were reasonable and ought to be upheld. The purpose rather was to place a statutory prohibition with prescribed penalties and remedies upon those contracts which were in direct restraint of trade, unreasonable and against public policy."

(*c*) The Court below in this case, apparently recognizes the question to be an open one, by saying:

"Until the Supreme Court shall otherwise hold, we feel concluded by the meaning placed upon the act by *United States v. Freight Association, 166 U. S., 290* * * * and not departed from in *Northern Securities Company v. United States, 193 U. S., 197, 331.*"

(4) An equally important proposition arises, should it be assumed that the so-called restrictive clause was illegal, in view of the fact that the petitioner was not seeking in this action to enforce the illegal covenant, but was endeavoring to recover for merchandise actually received and kept by the defendant under the petitioner's executed contract, which was separable from the so-called illegal covenant.

This necessitates a consideration of the scope of the decisions of this Court in *Oregon Steam Navigation Company v. Winsor, 20 Wall., 64,* and *Cincinnati Packet Co. v. Bay, 200 U. S., 179, 185,* and their application to commercial transactions of the character illustrated by the present case, which aggregate millions of dollars and are of daily occurrence.

II.

Assuming that the petitioner was organized for the purpose of restraining competition and enhancing prices, that fact would not constitute a defence, either under common law considerations or under the Sherman Anti-Trust Act, to an action brought to recover for goods sold and delivered.

The decision in *Connolly* v. *Union Sewer Pipe Company, 184 U. S., 540,* squarely involved the determination of this proposition. The action there was to recover the agreed purchase price of pipe, the vendor being concededly a trust and the defences interposed being based on the theory that, both at common law and under the Act of Congress of July 2, 1890, the contract was tainted with such illegality as to prevent a recovery. The defences were, however, overruled, and although Mr. Justice McKenna dissented, it was solely on the ground that the Illinois Anti-Trust Law of 1893, which expressly declared illegal any sale made by a combination, was a constitutional enactment, as to which proposition the majority of the Court was of a contrary opinion.

Mr. Justice Harlan differentiates the case from *Embrey* v. *Johnson, 131 U. S., 336,* and *McMullen* v. *Hoffman, 174 U. S., 639,* which are relied upon by Judge Lurton in the court below, saying:

"In the present case other conditions must control. This is not an action to enforce or which involves the enforcement of the alleged arrange-

ment or combination between the plaintiff corporation and other corporations, firms and companies in relation to the sale of Akron pipe. As already suggested, the plaintiff, even if part of a combination illegal at common law, was not for that reason forbidden to sell property it acquired or held for sale. The purchases by the defendants had no necessary or direct connection with the alleged illegal combination; for the contracts between the defendant and the plaintiff could have been proven without any reference to the arrangement whereby the latter became an illegal combination. If, according to the principles of the common law, the Union Sewer Pipe Company could not have sold or passed title to any pipe it received and held for sale, because of an illegal arrangement previously made with other corporations, firms or companies, a different question would be presented. But we are aware of no decision to the effect that a sale similar to that made by the present plaintiff to the defendants respectively would in itself be illegal or void under the principles of the common law. The contracts between the plaintiff and the respective defendants were, in every sense, collateral to the alleged agreement between the plaintiff and other corporations, firms or associations whereby an illegal combination was formed for the sale of sewer pipe.

* * * * *

"Much of what has been said in reference to the first special defense, based on the common law, is applicable to this part of the case. [That arising under the Sherman Act.] If the contract between the plaintiff corporation and the other named corporations, persons and companies, or the combination thereby formed, was illegal under the act of Congress, then all those, whether persons, corporations or associations, directly connected therewith, became subject to the penalties prescribed by Congress. But the act does not declare illegal or void any sale made by such combination, or by its agents, of property it

acquired or which came into its possession for the purpose of being sold—such property not being at the time in the course of transportation from one State to another or to a foreign country. The buyer could not refuse to comply with his contract of purchase upon the ground that the seller was an illegal combination which might be restrained or suppressed in the mode prescribed by the act of Congress; for Congress did not declare that a combination illegally formed under the act of 1890 should not, in the conduct of its business, become the owner of property which it might sell to whomsoever wished to buy it. So that there is no necessary legal connection here between the sale of pipe to the defendants by the plaintiff corporation and the alleged arrangement made by it with other corporations, companies and firms. The contracts under which the pipe in question was sold were, as already said, collateral to the arrangement for the combination referred to, and this is not an action to enforce the terms of such arrangement. That combination may have been illegal, and yet the sale to the defendants was valid.

* * * * *

"If the act of Congress expressly authorized one who purchased property from a combination organized in violation of its provisions to plead, in defense of a suit for the price, the illegal character of the combination, that would present an entirely different question. But the act contains no such provision."

It is not pretended that the defendant was a party to Exhibit 1 which is referred to the opinion of the Court below. The only contract that the defendant executed was Exhibit 2, which provided for the purchase by it from the petitioner, of wall paper for the year ending July 1, 1899, up to a certain amount. It will be shown under the next Point, that that agreement was identi-

cal in its scope with that under which Connolly purchased from the Union Sewer Pipe Company.

III.

The contract between the petitioner and the defendant was not one in restraint of trade and none of its provisions should debar recovery for goods sold and delivered to the defendant.

(a) *The Contract between the Petitioner and Defendant.*

The action was brought for goods sold and delivered, and did not plead any special contract. The contract between the petitioner and the defendant is however pleaded in the answer to which the petitioner demurred.

It is alleged that the merchandise for which the petitioner seeks to recover was sold under a contract entered into between it and the defendant whereby the former agreed to sell to the latter, known as Jobbers, the entire requirements in their business of selling wall paper, for the year ending July 1st, 1899, to an amount specified, such goods to be of the manufacture of the factories with whom the petitioner was under contract, the Jobbers reserving to themselves the right to purchase from others such merchandise as they might need in excess of an amount specified. The Jobbers were to be allowed discounts at rates fixed in

an accompanying schedule, and another schedule which was attached to the contract specified the road prices at which the petitioner sold its goods for the term named in the contract to dealers other than Jobbers and also contained a statement of discounts allowed to such customers for quantity purchases, together with terms of credit and freight allowances to which such customers were entitled.

Thereupon follows a provision, which is made the subject of criticism, and which reads as follows (Rec., p. 434):

"*Third.*—Attached hereto marked "B" is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers and also a statement of discounts allowed to such customers other than jobbers for quantity purchases, together with the terms of credit, and freight allowance to which such customers are entitled.

"It is an essential condition of this agreement that the Jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in Schedule B, the intent hereof being to assure the company against the use by the Jobber of this agreement to undersell the company."

It is also alleged that the defendants executed an instrument, described as Exhibit 3, which is in substance as follows (Rec., p. 447):

"In consideration of your having sold us wall paper, etc., at list prices and at quantity discounts as per following schedule * * * we hereby agree not to sell any of such goods to others on terms better or more favorable than those specified in the above schedule nor lower than said list prices, and our faithful performance of this agree-

ment is a condition precedent to the filling of our order. The intent hereof is to protect you fully against being undersold by us to customers to whom you do not allow quantity discounts."

These clauses are claimed to stamp the contract between the petitioner and the defendant with invalidity and to debar the former from resorting to the courts for the purpose of recovering for merchandise received by the defendant and on account of which it has made no payment whatsoever.

(b) *The Similarity of this Contract with that in the Connolly Case.*

It has already been urged that this case is governed by the decision of the United States Supreme Court in *Connolly* v. *Union Sewer Pipe Company* (*supra*). A careful examination of the record in that case will indicate that it involved the special feature upon which the defendants in the present case place so much reliance.

The contract under which Connolly and Dee received the merchandise for which a recovery was sought against them respectively is set forth in the record of that case and contains the following clauses:

"The party of the first part agrees to sell and deliver to the party of the second part sewer pipe, free on board cars at its factories, at the following discounts off the western price list, to wit: 24" socket pipe 80%, 6" and 9" ring pipes 85%. * * * In consideration of the foregoing agreement the party of the second part agrees to purchase and handle exclusively the sewer pipe handled and sold by the first party except where the first party is unable to furnish the party of the second part,

and to place with the first party all orders for sewer pipe that they the second party may make.

"In consideration of receiving the entire trade for sewer pipe from the party of the second part it is agreed by the party of the first part that a rebate of one per cent. of the gross sale be allowed to the second party. Said rebate to be paid the second party at the close of each year provided the terms of this agreement have been faithfully carried out. * * *

"It is further agreed that said first party permits said second party to purchase twenty-five cars of sewer pipe from A. B. Camp, Greentown, Ohio, and twenty-five carloads of pipe from the Chicago Sewer Pipe Company, Brazil, Indiana, but no more; and said second party consents to allow said first party access to his books to determine when above pipe has been delivered.

"The said second party further agrees to sell on and after September 1, 1895, all sewer pipe purchased from the party of the first part, free on board cars in carload lots, or at their respective yards or places of business in the City of Chicago or in Cook County, at the following discounts from the Western price list, namely,

6" and 9" ring pipe, 70% off list.
24" socket pipe, 60% off list.

"In no case shall seconds or culls be shipped by the first party for use within the corporate limits of the City of Chicago." (See Record in U. S. Supreme Court, pp. 23, 24.)

The record in this Court further shows, page 246, that among the errors assigned was the following:

"The Court erred * * * f. In ruling that no contract in this cause was sued upon which in itself was in restraint of trade, whereas a written contract between the plaintiff and the defendant Dee in restraint of trade and void under the com-

mon and general law, both of the State of Ohio and of the State of Illinois, constituted the foundation of the plaintiff's cause of action, which contract was in the words and figures following, to wit."

Then follows a *verbatim* copy of the contract already referred to.

This assignment of error was called to the attention of this Court on pages 30 and 31 of the brief filed by the plaintiff in error.

It is thus clear that the *Connolly* case is identical in every essential feature with the present case. The Union Sewer Pipe Company was organized to handle the product of various sewer pipe manufacturies. It entered into contracts with jobbers wherein the prices charged to the latter were fixed in accordance with a price list promulgated by the vendor. Discounts from such price list allowed to the jobber were specified. The jobber was required to purchase all of his goods from the vendor with certain specified exceptions, as to which the jobber was permitted to purchase in specified and limited quantities from other producers. The jobber was further restricted as to the terms on which he might sell the sewer pipe purchased from the vendor and the discounts to be allowed to his customers.

And yet, although the validity of this contract was squarely presented on the trial and also on appeal by the assignments of errors and briefs of counsel, this Court permitted the vendor to recover the purchase price of merchandise delivered under this contract to the vendee.

The reason of this decision is obvious. The vendor was under no obligation to sell to the

vendee. It had the right to sell at such prices and on such terms of payment as it saw fit. It was also its privilege to sell under such conditions as would preclude its vendee from reselling the goods so purchased to the injury of the vendor. Otherwise the vendee might have wrought havoc with the vendor's trade by breeding suspicion as to the regularity of its business methods, and of its good faith and fairness towards the trade. It would have unsettled the vendor's market and would have tended to interfere with the vendor's ability to sell its goods.

The condition inserted in the contract now under consideration was intended only for the protection of the vendor from the acts of its own customer, who was not a producer and who but for the contract in question could not have acquired the vendor's goods. The agreement did not assume to refer to any merchandise other than that purchased by the vendee from the company under the terms of the contract. It did not affect or seek to regulate the terms on which the vendee might have sold merchandise purchased from any other producer, or even merchandise of the vendor which the defendants might have purchased from some other jobber in the open market at public or private sale, the prohibition being "that the Jobber will "not directly or indirectly sell or offer for sale "*any of the merchandise purchased from the com-*"*pany hereunder at lower rates, etc.*"

(*c*) *The Validity of such a Contract as the present was not only necessarily decided in the Connolly Case but was expressly held in United States* v. *Addystone Pipe & Steel Co.* (85 *Fed. Rep.*, 271), *subsequently affirmed here.*

There the contract between various producers of iron pipe in different states formed a combination whereby the territory in which they operated was divided into "reserved" cities and "pay" territory. The reserved cities were allotted to various members of the combination, free of competition from the others, although provision was made for pretended bids by the latter at prices previously arranged. In the pay territory all offers to purchase pipe were submitted to a committee, which determined the price and then awarded the contract to that member of the combination who agreed to pay the largest "bonus" to be divided among the others. This was held to be an unlawful combination, both at common law and under the *Anti-Trust Act* of July 2, 1890.

In the course of the luminous opinion of Judge Taft, in which Mr. Justice Harlan and Judge Lurton concurred, the inhibitions against restraints of trade at common law were first considered, and the genesis of covenants regarded as valid which were apparently in restraint of trade but in reality not so, was considered. At page 280 he says:

"After a time it became apparent to the people and the courts that it was in the interest of trade that certain covenants in restraint of trade should be enforced. It was of importance, as an incentive to industry and honest dealing in trade, that, after a man had built up a business with an extensive good will, he should be able to sell his business and good will to the best advantage, and he could not

do so unless he could bind himself by an enforceable contract not to engage in the same business in such a way as to prevent injury to that which he was about to sell. It was equally for the good of the public and trade when partners dissolved and one took the business, or they divided the business, that each partner might bind himself not to do anything in trade thereafter which would derogate from his grant of the interest conveyed to his former partner. Again, when two men became partners in a business, although their union might reduce competition, this effect was only an incident to the main purpose of a union of their capital, enterprise and energy to carry on a successful business, and one useful to the community. Restrictions in the articles of partnership upon the business activity of the members, with a view of securing their entire effort in the common enterprise, were, of course, only ancillary to the main end of the union, and were to be encouraged. *Again, when one in business sold property with which the buyer might set up a rival business, it was certainly reasonable that the seller should be able to restrain the buyer from doing him an injury which, but for the sale, the buyer would be unable to inflict. This was not reducing competition, but was only securing the seller against an increase of competition of his own creating. Such an exception was necessary to promote the free purchase and sale of property* [italics ours]. Again, it was of importance that business men and professional men should have every motive to employ the ablest assistants, and to instruct them thoroughly; but they would naturally be reluctant to do so unless such assistants were able to bind themselves not to set up a rival business in the vicinity after learning the details and secrets of the business of their employers. * * * For the reasons given then, covenants in partial restraint of trade are generally upheld as valid when they are agreements (1) by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property

or business sold; (2) by a retiring partner not to compete with the firm; (3) by a partner pending the partnership not to do anything to interfere, by competition or otherwise, with the business of the firm; (4) by the buyer of property not to use the same in competition with the business retained by the seller; and (5) by an assistant, servant or agent not to compete with his master or employer after the expiration of his time of service."

Illustrations are given of these various classes of cases, and among those relating to the fourth class are *American Strawboard Co.* v. *Haldenan Paper Co.*, 83 *Fed. Rep.*, 619; *Hitchcock* v. *Anthony*, 83 *Fed. Rep.*, 779 (*both decisions of this Court*); *Navigation Co.* v. *Windsor*, 20 *Walace*, 64; *Dunlop* v. *Gregory*, 10 *N. Y.*, 241, and *Hodge* v. *Sloan*, 107 *N. Y.*, 244, all of which recognized the principle which we have italicized in the foregoing paragraph.

The opinion of Judge Taft then proceeds to consider various combinations of producers and manufacturers which *inter sese* were declared to be void as being in restraint of trade, after which he says (p. 290):

"In the foregoing cases the only consideration of the agreement restraining the trade of one party was the agreement of the other to the same effect, and there was no relation of partnership, *or of vendor and vendee*, or of employer and employee. Where such relations exists between the parties, as already stated, restraints are usually enforceable if commensurate only with the reasonable protection of the covenantee in respect to the main transactions affected by the contract."

This decision was affirmed in 175 U. S, 211, without in any way qualifying the language of

Judge Taft, the case being treated as a combination among manufacturers to restrain production and the sale of their products.

(d) Other decisions sustaining the validity of this contract.

Dolph v. *Troy Laundry Machine Co., 28 Fed. Rep., 553; s. c. 138 U. S., 617.*
Fowle v. *Park, 131 U. S., 88, 91.*
Anderson v. *United States, 171 U. S., 674.*
Garst v. *Harris, 177 Mass., 72.*
Stein v. *Dorman, 25 Ohio St., 580.*
N. Y. Bank Note Co. v. *Hamilton Bank Note Co., 83 Hun, 593.*
Brett v. *Ebel, 29 App. Div., 256.*
Walsh v. *Dwight, 40 App. Div., 514.*
Lough v. *Outerbridge, 143 N. Y., 283.*
Park & Sons Co. v. *National Wholesale Druggists Association, 175 N. Y., 1.*
Whitwell v. *Continental Tobacco Co., 125 Fed. Rep., 454.*
Phillips v. *Iola Company, 125 Fed. Rep., 593.*
Hartman v. *John D. Park Sons Co., 145 Fed. Rep., 358, 378.*

Contracts analogous to that now under consideration have been upheld in various jurisdictions.

Thus, in *Newell* v. *Meyendorff* (9 *Montana*, 264 8 *L. R. A.*, 440) it was held that a contract giving a vendee an exclusive agency for the sale of a cer-

tain brand of cigars in Montana and providing that the vendors would not sell such cigars to any one else within that territory, and that the vendee should cease advertising and selling various other brands in which he had been dealing, was valid.

In *Meyer* v. *Estey* (164 *Mass.*, 457) a contract for the sale of electrotype plates under a stipulation that the buyer would not sell the plates to other parties or multiply them for the purposes of sale, was declared to be enforceable.

In *Commonwealth* v. *Grimstead* (*Ky.* ; 56 *L. R. A.*, 709) an agreement between a manufacturer and the vendee of his product, in which the latter agreed not to sell below a minimum price, was pronounced as not in conflict with the Kentucky statute for the suppression of conspiracies and trusts. It was considered entirely lawful for a manufacturer to prevent his goods from being brought into competition with those of an inferior grade and to refuse to sell to any one who would not agree to refrain from selling below the minimum price fixed by the manufacturer.

In *Crystal Ice Mfg. Co.* v. *Brewing Association* (8 *Tex. Civ. App.*, 1) a contract between an ice manufacturer and a trader, whereby the former agreed to sell the latter all the ice he needed and the trader agreed not to retail ice or to sell to retailers, was held to be valid.

In *Clark* v. *Frank* (17 *Mo. App.*, 602) a contract whereby a purchaser of thread in consideration of certain rebates in the price agreed to maintain a certain price in selling at retail the brand of goods sold to him, was decided not to be a contract in restraint of trade.

In *Keith* v. *Herschberg Optical Co.* (48 *Ark.*, 138) an agreement made by a drummer with a

purchaser not to sell a certain kind of goods to any one else in the same town was considered to be valid.

In *Brown* v. *Rounsavall* (78 *Ill.*, 589) a contract to furnish a dealer with sewing machines at a discount and upon credit, on condition that the purchaser should deal exclusively in the machines sold by the vendor, was likewise upheld.

In *Roller* v. *Ott* (14 *Kan.*, 609) a contract between A and B that the former will not sell furniture in Ottowa to any person other than B was held to be valid.

See also

Fuqua v. *Pabst Brew. Co.*, 36 *S. W. Rep.*, 479.
Barber Asphalt Co. v. *Brand*, 7 *N. Y. Supp.*, 744.

(*h*) *Decisions relied on by Defendant.*

An examination of the cases which have been cited to sustain the proposition that such a contract as the present is invalid will, on analysis, be found to differ most materially in their facts and circumstances. They either involve the formation of combinations between producers of or dealers in merchandise to limit the production or supply of an article, or they are cases in which a corporation of a quasi-public character, charged with a public duty, as for example a railway company, or a gas company, enters into a contract restrictive of its business, and which disables or hampers it from performing the duty which it owes to the public.

This distinction was recognized by the Supreme

Court of Minnesota in *New York Benefit Co.* v. *Union Hospital Co.* (11 *L. R. A.*, 437, 440).

Without undertaking to comment on every case which has been or may be cited against us, it will be sufficient to advert to a few of the more prominent ones.

Central Ohio Salt Co. v. *Guthrie*, 35 *Ohio St.*, 666) was a case of a voluntary association of salt manufacturers who agreed among themselves to regulate prices and the grading of their product and to prohibit the various members from selling salt except at prices fixed by the association. The action was not one to recover the price of salt sold to a third person, but related solely to the validity of the contract as between the original parties thereto.

Morris Run Coal Co. v. *Barclay Coal Co.* (68 *Pa. St.*, 173) was a case of a contract regulating the sale of coal between various producers and related to the validity of the contract regulating production as among the parties to the combination.

In *Cummings* v. *Union Blue Stone Co.* (164 *N. Y.*, 401) there was an agreement between the producers of practically all of the stone known as Hudson River blue stone which fixed the prices at which it was to be sold, apportioned the sales among the different members of the association, and in other respects regulated the conduct of the business. The action was for an accounting between the several members of the association.

Recognizing the principle laid down in *Hodge* v. *Sloan* (*supra*) the court distinguished that case from the one then under consideration by the circumstance that the latter related to a combination among many dealers to prevent competition

among themselves, to control and limit production, and to increase and maintain prices.

In *Cohen* v. *Berlin & Jones Env. Co.* (166 N. Y., 292) the agreement which was under consideration was one between the manufacturers of eighty-five per cent. of the envelopes of the country and an outside manufacturer, which in effect made him a member of the combination, subjected him to the conditions of their contract, and made him a party to a scheme restricting him in the disposition of his own product and fixing the price at which his own manufactures might be disposed of. Neither his plant nor good will was acquired by the combination, but he subjected his product to the control of the combined manufacturers.

Hence, the case was considered identical with that passed upon in *Cummings* v. *Union Bluestone Co.* (*supra*).

Nestor v. *Continental Brewing Co.* (161 *Pa. St.*, 473) was a case of an agreement between the brewers of Philadelphia and vicinity to regulate the price of beer and was an attempt to enforce that contract between the parties thereto.

People v. *Sheldon* (139 *N. Y.*, 251) was an indictment against the coal dealers of Lockport, who entered into a combination for the purpose of controlling the price and managing the sale of coal so as to prevent competition between the members of the organization.

Judd v. *Harrington* (139 *N. Y.*, 105) was an attempt to enforce as between the parties thereto an agreement tending to prevent competition among dealers in sheep and lambs in the City of New York by an action brought to recover liquidated damages against a member of the combination for a breach of his covenant.

The case principally relied upon by the defendants is *Arnot* v. *Pittston & Elmira Coal Co.* (68 *N. Y.*, 568). A careful examination of that case will, however, indicate that it involved a contract between producers.

The defendant and the Butler Colliery Company were engaged in mining coal near Pittston, Pennsylvania. The defendant had a coal depot at Elmira, which was the chief market for coal in Western New York, from which it supplied a large extent of territory North and West. For the purpose of monopolizing the trade and to maintain an unnaturally high price the two companies entered into a contract whereby the defendant agreed to take all the coal which the Butler Colliery Company should desire to send north of the State line, not exceeding two thousand tons per month, at the regular market price less a commission of fifteen per cent., and the Butler Colliery Company agreed not to sell coal to any party other than defendant to come north of the State line. The product of the Butler Colliery Company largely exceeded two thousand tons per month. The Butler Company delivered coal and made advances under the contract during the first month and then refused to carry it out further, and the plaintiff, as the assignee of its claim under the contract, sued to recover the agreed price for the coal so delivered.

It was obvious that the Butler Colliery Company became a party to an unlawful scheme; that it as a producer entered into a contract with another producer whereby it prevented itself from competing with the latter within the limits of the State of New York, and by suing upon this contract the

plaintiff was seeking to avail himself of its illegal provisions.

Judge Rapallo in the course of his opinion said (p. 565):

"It cannot escape observation that by this agreement the Butler Colliery Company did not agree to sell or deliver to the defendant all of the product of its mines, nor any specific quantity or proportion thereof. It was entirely optional with it whether or not to deliver any coal to the defendant. But the defendant did agree to take all the coal which the Butler Company might desire to send north to the extent of two thousand tons per month. This undertaking would have been utterly void for want of mutuality had it not been for the agreement of the Butler Company *that it would not sell coal to any other party, to come north of the State line.* The only consideration for the agreement of the defendant to take of the product of the Butler Company to the extent of two thousand tons per month, consisted in the stipulation of that company not to sell to any one but the defendant. Without that stipulation, the paper called a contract would have amounted to nothing. Neither party would have been bound to deliver or accept any coal. That stipulation was all that gave vitality to the contract.

"Bearing in mind the fact found, that the product of the Butler Company's mines was largely in excess of two thousand tons per month, the object of the agreement is plain. The defendant, *without binding itself to take the whole product of the mines of the Butler Company,* endeavored by this agreement to keep all of the coal of that company out of the market, except the limited amount which it agreed to take, and thus to artificially enhance the price of that necessary commodity. This purpose was the basis of the whole agreement, and, as is found by the referee, was understood by both parties at the time of entering into the contract."

How different is the case here presented! The defendants were not producers of wall paper. They were jobbers in that article of merchandise. They were not limited as to the quantity of goods that they might sell. They bound themselves to purchase a certain quantity from the petitioner in order to get certain discounts. They agreed that they would not sell the goods which they purchased from the petitioner at a price less than that specified in the contract. They were at liberty to manufacture and sell at any price and to any extent the product of their own manufacture. They were at liberty to purchase from other manufacturers and sell at any price. They were at liberty to purchase the goods dealt in by the plaintiff from any other dealer and dispose of them at any price that they might desire. Their agreement did not curtail production, or keep out of the market any commodity or artificially enhance prices.

This case would be like the *Arnot case* if the defendants had been manufacturers of wall paper and had given an option to the petitioner to purchase a portion only of their product, agreeing at the same time to keep all the remainder of their product out of the market. As it is, however, none of these elements exist in the contract between the petitioner and the defendants.

Unckles v. *Colgate* (148 N. Y., 529, 538), was an attempt by a party to an unlawful trust agreement to require his associates to account to him.

Bishop v. *American Preservers Co.* (157 Ill., 284), was likewise a case between parties who formed an unlawful trust.

Pullman Car Company v. *Transportation Company* (139 U. S., 24), is not an authority against the petitioner. There, a corporation undertook to

transfer all of its property and assets, including patents, moneys, credits and rights of action, for a term of ninety-nine years, and covenanted not to engage in the business of manufacturing, using or hiring sleeping cars while the contract should remain in force. The contract was held to be void because beyond the corporate powers of the lessor, and because it involved an abandonment of its duty to the public; and consequently no action could be maintained by the lessor.

Incidentally it was also suggested that the contract was in restraint of trade, but the Court did not base its decision upon that theory. At all events there was an attempt to recover upon a contract which was in all of its essential features unlawful.

McMullen v. *Hoffman* (174 *U. S.*, 639) is much relied upon by the defendants, but it will be seen that in that case the plaintiff and the defendant entered into a fraudulent contract for the construction of a public work in the City of Portland, Oregon, which involved the suppression of competition between the parties to the contract sought to be enforced, the presentation of fraudulent bids, and the enhancement of the prices of the work to be performed. One of the parties to this illegal agreement sought an accounting of the profits made by his associate in villainy out of the work performed under the contract procured by these fraudulent means.

It is impossible to see how the Court could have done otherwise than to hold that it could not lend its assistance in any way toward carrying out the terms of an illegal contract. It was a proper case for the application of the principle *ex turpi causa non oritur actio*, and the position of the litigants

was likened by the Court to that of two highwaymen who applied to a court of equity to administer the division of their spoils.

It is difficult to understand the relevancy of this authority to a case where a dealer in a lawful commodity sells his merchandise at a price agreed to be paid by a purchaser and upon conditions which will protect him from acts of the purchaser tending to injure him.

Defendant has referred to *Montague & Co.* v. *Lowry, 193 U. S.,.38 and Northern Securities Company* v. *United States, 193 U. S., 197.*

Neither of these cases has any application to the case now under consideration. In neither of them was the doctrine laid down in *Connolly* v. *Union Sewer Pipe Company, 184 U. S., 540,* modified or qualified to the slightest extent. In neither of them was there an attempt on the part of one dealing with an alleged trust to avoid payment for merchandise purchased, as in the present case.

Neither did these cases involve the question of the validity of a provision in a contract of sale intended for the protection of the vendor now considered. In both cases the question involved related to whether or not the organization sought to be attacked violated the Anti-Trust Act of July 2nd, 1890, and whether or not the statutory relief provided for in such act was enforceable.

Connolly v. *Union Sewer Pipe Company* is an authority to the effect that the anti-trust act does not constitute a defence or counterclaim which the defendant can make use of in the present form of action to recover for goods sold and delivered, and that doctrine is in no wise weakened by the cases referred to.

In *Montague* v. *Lowry* (*supra*) the defendants

constituted an association of manufacturers and dealers in tiles, mantels and grates. By the terms of the organization the dealers agreed not to purchase materials from manufacturers who were not members, and not to sell unset tiles to any one other than members for less than list prices, which were fifty per cent higher than the prices to members, and the manufacturers agreed not to sell to any one other than members. The plaintiff sued this association to recover treble damages under the provisions of section 7 of the Anti-Trust Law resulting from the existence of this organization. It was held that the combination was violative of the statute as a combination in restraint of interstate trade and commerce and that the parties aggrieved were therefore entitled under the statute to recover threefold the damages found by the jury.

That case presents no parallel to the present. If the defendant had been refused goods by the petitioner, and had been prevented from purchasing them from it and had thereby sustained damage, an action brought by defendant against the petitioner to recover such damages would have presented a similar situation. But the petitioner in fact purchased all the goods that it desired, but now refuses to pay for them.

Neither is there any parallel between the provisions of the Constitution and By-Laws of the association in question and the provisions in the contract of sale under which the defendant purchased its goods from the petitioner. In the Montague case the dealers agreed not to purchase materials from manufacturers who were not members, and not to sell tiles to any one other than members for less than the list prices, which

were fifty per cent higher than the prices to members. This imposed a restraint upon trade. The dealers were not permitted to sell to any one other than members except on terms which deprived them of an opportunity of selling at a reasonable profit. Whereas the contract under which the defendant purchased from the plaintiff did not prohibit it from selling at the same prices at which it had purchased, to anybody. It was merely prohibited from selling the goods which it had purchased from the plaintiff at a price lower than the list prices at which it had purchased. It did not require the defendant to purchase from the petitioner only, but the defendant had the right to purchase from anybody and to sell any goods which it might acquire from any other person, even though they might have been originally purchased from the petitioner at any price that the defendant desired.

Northern Securities Company v. *United States* has been sufficiently considered under Point I.

IV.

The facts alleged in the answer do not take this case out of the purview of the decision in Connolly v. Union Sewer Pipe Company (184 U. S., 540), since they clearly show that the defendant was not a member of a trust, but if there was a trust that he was its victim.

The second defence with great elaboration undertakes to state the history of the organization of the plaintiff; the issuance of its stock; the distribution of it among various manufacturers of wall paper; the purpose of compelling all dealers in wall paper whether jobbers or wholesalers to sign certain agreements; the establishment of prices (Rec., pp. 386 to 396).

It is nowhere pretended that the defendant was a party to this arrangement, but, on the contrary, that it was an outsider, being a jobber, and not one of the persons or corporations named as entering into the so-called unlawful combination (Rec., pp. 387, 396). The combination of these designated firms and corporations was (Rec., pp. 389, 398), charged to be "to limit the production of wall paper in the United States, and also to enhance the price thereof to the *jobbers*, the wholesalers, the retailers and the consumers of wall paper."

On page 389, it is also alleged that the "firms and corporations hereinbefore mentioned, agreed with each other, that while said corporations and persons should retain the ownership of their sev-

eral plants and businesses," they should do certain things for the purpose of carrying into effect their scheme.

The third defence alleges that the defendant has been for ten years last past, and was at the time stated in the petition, and is now, engaged in the business of buying, selling and dealing generally throughout the State of Ohio and elsewhere in wall paper of all kinds (Rec., p. 396); that the business of the defendant has consisted of what is generally known as that of a jobber or "wholesaler," that is to say, the defendant at the beginning of each season has bought from those engaged in the manufacture of wall paper merchandise in wholesale lots and has resold the same from time to time to retail dealers (Rec., p. 396).

It is then alleged that on July 1, 1898, the National Wall Paper Company was the owner of certain specified factories for the manufacture of wall paper (Rec., pp. 396, 397), and that other designated firms and corporations, not including the defendant, were engaged in the manufacture of wall paper and the sale of their product at various places designated (Rec., pp. 396-398). It was then alleged that these persons, firms and corporations, "Contriving and intending and conspiring with each other to form a combination and trust by which to limit the production of wall paper in the United States and also to enhance the price thereof to the jobbers, the wholesalers, the retailers and the consumers of wall paper * * * agreed with each other that, while said corporations and persons should retain the ownership of their several plants and

businesses * * * the control of said several businesses, and all matters relating to and affecting the production of said several establishments and the prices and sale of wall paper manufactured thereby, should be placed under the control of a committee to be appointed by said several corporations and firms * * * that said committee should adopt rules and regulations governing the manner of conducting the business of all such persons, firms and corporations * * * to fix and determine list prices, discounts, terms of sale, equalization of freight rates, and all other matters affecting the production and regulation of prices and the classification of the dealers in wall paper in the United States; and the prices at which the wall paper should be sold to and by such several classes" (Rec., pp. 398, 399).

It is then alleged that contriving, intending and conspiring together, with intent to disguise the real agreement, and to defeat and evade the law and the provisions of the statutes of the several states, and of the United States, it was further agreed that, for the more effectual carrying out of said agreement, a corporation should be ostensibly formed under the laws of the State of New York, to be called the Continental Wall Paper Company, being the plaintiff herein, with a capital stock of $200,000 (Rec., pp. 399, 400).

The terms of the agreement entered into between the various firms and corporations forming the Continental Wall Paper Company is then set forth (Rec., p. 399):

"For the purpose and with the intentions aforesaid, it was further agreed that said the Continental Wall Paper Company should, in some

form so as to disguise the real nature of the transaction, compel all dealers in wall paper, whether jobbers or wholesalers, to sign an agreement obligating the jobbers or wholesalers to buy from no one but said members of said combination and trust, and at the prices fixed in Schedule B attached to said Exhibit 1, and likewise an agreement by such jobbers not to sell goods to dealers other than jobbers at lower prices or upon better or more favorable terms than those shown in the Schedule C attached to said Exhibit 1, under the penalty that if they refused so to do, no wall paper should be sold to such jobber by any of said corporations or firms, and that, thereby, such jobbers should be driven out of business'' (Rec., p. 400).

It is then alleged that in pursuance of said agreement the plaintiff was nominally incorporated with the stock aforesaid, and the said contracts were signed by the National Wall Paper Company, and said persons and corporations, being, at once, subscription for stock by said so-called vendors, the acceptance of such subscription by the said Continental Wall Paper Company, and by it, nominally, each so-called vendor sold unto the company, and the latter agreed to purchase the entire product of wall paper manufactured by each of said vendors for the period from July 20, 1898, to the first day of July, 1899; that said contract further fixed prices at which the merchandise should be nominally sold to the Company, and further nominally provided that the goods pretended to be acquired by the Company from the so-called vendor, should be sold by the Company for the account of the Company, and that the goods acquired which should be sold to wholesalers other than jobbers, should be sold by

the vendor for the account of the Company (Rec., pp. 400, 401).

It is then alleged that the schedules attached to said agreement contained a list of prices for all commodities in the wall paper line, which were called "List" or "Road Prices," and that said contract provided that sales made to jobbers should be made at discounts from said List or Road Prices fixed in the schedule marked "B" annexed to said Exhibit 1 (Rec., pp. 401, 402).

The various terms of the contract between the so-called vendors and the company are then set forth (Rec., pp. 402-405). The answer then alleges (Rec., p. 405):

"It was further a part of said agreement, though not reduced to writing, save as is set forth in said exhibit, that all jobbers and other wholesalers of wall paper should be *forced* to sign an agreement binding themselves to purchase their entire stock of wall paper nominally either from plaintiff or from said corporations or firms at prices fixed in said Exhibit 1, and that they should only sell at prices fixed in the Schedules attached to said Exhibit 1, under the penalty, which the combination of all of said corporations and firms enabled them to enforce, that such jobbers or wholesalers, in case of refusal to accede to the terms so imposed, or in case of violation thereof, should be unable to buy wall paper, should be driven out of business, and should sacrifice the good will and capital therein invested."

On page 406 it is alleged:

"In the further carrying out of said scheme to stifle competition, etc., * * * it was further agreed between the members of said combination and trust that the so-called directors of plaintiff, being really a committee appointed as aforesaid

by the said members of said trust or combination, should arbitrarily classify the wholesale dealers of wall paper in the United States and territories thereof, into two classes, namely, jobbers and road or quantity buyers; that they should further arbitrarily classify the jobbers into "First Class" and "Second Class" and "Third Class" jobbers; that they should further arbitrarily classify the other wholesalers into "Road" or "Quantity Buyers", and "Special Buyers"; that being thus classified they should all be compelled to sign written agreements, nominally with said company, *really with said members of said combination or trust*, obligating them to buy their entire stock of merchandise from said company. A copy of said agreement so to be signed by said jobbers is attached hereto, marked Exhibit 2, and made a part hereof."

On page 406 it is alleged:

"To conceal the fact that it was an agreement to purchase from no one but said Company, and the members of said combination and trust, the amount of purchases made by the buyer, in the previous year, from all the members of said combination or trust, being the entire amount of purchases made by such buyer during the preceding year, was ascertained, and an amount at least double thereof, * * * was inserted in said blank as the amount to be purchased by such buyer from the Company. By said agreement the prices to be paid by the jobber were fixed according to the class in which he was arbitrarily placed, at prices enumerated in Schedule B attached to said Exhibit 1 and the prices at which alone said jobber could sell, was fixed as shown by Schedule C attached to said Exhibit 1."

On page 407 it is alleged:

"The members of said combination and trust, and said plaintiff, further to carry out said agree-

ment, compelled all other wholesale and quantity buyers to sign agreements in the form attached to this answer, marked Exhibit 3."

It is then alleged on page 407:

"On, before and after said first day of July, 1898, this defendant had a large and profitable business of long standing, possessing a valuable good-will, and in which they had a large capital invested, being what is generally called the business of a jobber or wholesaler of wall paper in the State of Ohio and throughout the States and territories of the United States. The defendant and all other persons engaged in the wholesale wall paper business at the beginning of each season, which commenced in September and closed the first of July following, according to the custom of the trade, bought from the various persons engaged in the manufacture and sale of wall paper in the United States, *being the persons, members of said combination and monopoly,* their stock of wall paper. * * * At said time *said members of said combination and trust* having, by the agreements and acts aforesaid, obtained the control of the wall paper trade throughout the United States, at once greatly advanced the price of said wall paper and threatened defendant that unless it signed said agreement, Exhibit 2, no wall paper would be sold to it; that said combination would make it impossible for it to buy wall paper, or to continue its business, and compel it to sacrifice the good will owned by it as aforesaid, and the capital invested by it in said business."

The answer then continues, page 408:

"Said *combination or trust* then and from that time thereafter, until the first day of July, 1900, had the power, by means of said *combination and said agreements,* and the will, to carry out its said threats, and deprive these defendants or any person, firm or corporation engaged in the business

of selling wall paper in the United States of the power to obtain wall paper for its or their trade, and the will and the power to drive out of business any person, firm or corporation engaged in the business of selling wall paper, deprive them of their good will, and compel them to sacrifice the capital invested in the business. In like manner, by the same means, all other jobbers and wholesalers of wall paper in the United States, and all persons engaged in commerce in the wall paper trade between the several states of the Union and foreign countries, were compelld to and did sign the agreements attached to this answer as Exhibits 2 and 3.

"The immediate, intended and direct effect of the said combination and agreements was the stifling of competition between said manufacturers and vendors of wall paper, and between the jobbers and wholesalers thereof, and to unduly enhance the price of wall paper."

"After the making of said agreements, as before, the members of said *combination* solicited and received orders from this defendant, and all other wholesalers, filled their orders; * * * said *combination* contrived, intended and did prevent free and unrestricted competition between the producers and between the purchasers of wall paper, and between the jobbers and wholesalers of wall paper throughout the United States." (Rec., p. 409.)

On page 409 it is alleged:

"Defendant avers that said plaintiff, and the members of said combination as aforesaid, combined capital and skill for each and all of the following purposes, to wit: * * *"

Then follows an enumeration of the alleged unlawful purposes.

Then follows the conclusion, page 410:

"Said contracts and agreements were each and all combinations and conspiracies in restraint of trade and commerce between the several states, and with foreign nations * * * and by said contracts, and the acts done by the members thereof, and by said plaintiff under and in pursuance thereof, said plaintiff and the said members of said combination or trust did monopolize and attempt to monopolize the trade and commerce in wall paper among the several states and with foreign nations."

On page 410 it is alleged:

"These defendants aver that the prices charged in said Exhibit attached to said amended petition, are the prices fixed and determined in pursuance of, and by the combination or trust agreement, as above set forth, and are unreasonable, unjust and excessive."

The third defence concludes with the allegation:

"Each and all of the provisions of said contract and agreement between said members of said combination and each other; between said so-called vendors and said plaintiff; between said members of said combination and said plaintiff and the so-called jobbers; between the members of said combination and trust and said plaintiff and the so-called 'Road' or 'Quantity Buyers,' are each and all contrary to the provisions of the statutes, etc." (*Rec., p. 411*).

We have thus with great detail sought to analyze the answer. Stripping it of all verbiage and of its epithetal allegations and of the conclusions drawn and characterizations indulged in, it amounts simply to this:

First.—Various manufacturers of wall paper, among whom the defendant is *not* included because it was not a manufacturer but a jobber, combined together for the purpose of forming the Continental Wall Paper Company and of controlling the production and sale of wall paper thereby.

Second.—For the purpose of carrying out their plan they entered into agreements with each other regulating the manner in which their product was to be handled, the prices and terms on which such product was to be sold, the persons, firms and corporations to whom wall paper would be sold, and the conditions of such sale.

Third.—That the persons thus organizing the Continental Wall Paper Company intended to violate various statutes, to monopolize the manufacture of wall paper, to enhance the prices thereof, and to do other unlawful acts.

Fourth.—That the defendant, who was a jobber and wholesaler to whom the combination expected to sell wall paper, was compelled by the combination to purchase the wall paper which the defendant required upon the terms fixed and established by the combination, and was forced and compelled to execute an agreement specifying the terms on which such purchases were to be made and the conditions on which the goods so purchased were to be dealt in.

If the defendant had been charged with a violation of the Sherman act, by an indictment containing the allegations, which have been here set forth, could it be seriously considered that the indictment could stand?

There is not a fact or circumstance alleged in the answer which indicates that the defendant was a member of the combination or trust. Every allegation of the answer excludes the defendant as such member of the combination. Those who constituted the combination are referred to over and over again. Nowhere is the defendant referred to as a constituent part of such combination. On the contrary, it is the defendant against whom the evil purposes of the combination are directed. It is the defendant who is to be coerced, compelled, threatened. It is the defendant to whom the combination sells its product at enhanced prices and which is sought to be immolated by the trust.

It is something unheard of in the law that the victim is in the same category as the unlawful conspirator; that the person prosecuted is *particeps criminis* with the prosecutor; that the party compelled to purchase at an enhanced price is in the same plight as the vendor. If the members of the so-called combination referred to in the answer and the defendant had been jointly indicted as guilty of a conspiracy in violation of the Sherman anti-trust law, could it be claimed for a moment that the defendant, on the facts set forth in the answer, could be charged with complicity and be considered in legal contemplation as a member of an unlawful trust? Certainly not. And if not in a criminal proceeding how can it be claimed that where the question arises as to what constitutes a trust in a civil action any different rule is applicable than that which applies in a criminal proceeding?

Referring to the fourth and fifth defences, in which the defendant seeks to counterclaim for the damages sustained by it as the victim of the trust,

it is clear that the defendant was not in any sense a member thereof for it seeks to recover the damages which it sustained as a result of the pretended illegal machinations of the trust against it (*Rec., pp. 411 to 414*).

Turning to the interrogatories, it is indicated that the whole theory of the defence is that the plaintiff was a trust and the defendant its victim (*Rec., pp. 415 to 419*).

The case is in every respect the same as *Connolly* v. *Union Sewer Pipe Company*. It could have been urged in that case with exactly the same force as here, that Connolly and Dee were members of the combination because they had entered into a written contract with it and had agreed on a schedule of prices at which they were to sell the goods which they had acquired from the so-called trust. Yet, as has been seen, it was decided in that case that conceding that the Union Sewer Pipe Company was a trust and that it violated the provisions of the anti-trust act, and of the laws of Illinois, those facts did not debar a recovery on a contract whereby the trust sold merchandise on terms almost identical with those set forth in the defendant's answer.

The effect of the defendant's contention is, that if it is shown that a trust sells its goods only on condition that the purchasers from it enter into a written contract fixing the terms of the purchase, *ipso facto* every person who deals with a trust and with its customers becomes a member of the trust and consequently that the ultimate consumer would be enabled to confiscate the property of a monopoly or dealer who is charged to be a member of such trust.

The opinion of this Court in the *Connolly case*

was intended to avoid such consequences. It was believed that the legislation of Congress and of the several states provided adequate remedies for the punishment of those who undertook to monopolize an article of commerce, without providing a method whereby a dishonest purchaser from the so-called trust might deliberately plan to acquire its property and then proceed to confiscate it on the theory that the vendor had incurred a penalty for a violation of the law.

So anxious is the defendant to occupy this ungracious position that it is even willing to befoul its own nest and to proclaim its own iniquity by urging that it has committed a crime, of which it is in fact innocent. It is believed that the courts will not aid the defendant in its attempt to appropriate the petitioner's property by this method, but if any wrong has been done the defendant will require it to proceed according to such methods and in such tribunals as are provided for its relief.

V.

Assuming that the clause contained in the contract between the petitioner and the defendant which prohibited the latter from selling any of the merchandise purchased from the former at lower prices than those specified in the schedule annexed was illegal, the only effect of such illegality would have been to nullify that provision and not to prevent the petitioner from recovering for merchandise actually received and kept by the defendant.

The petitioner sold and delivered its merchandise to the defendant. Its contract was entirely executed. The defendant having received the merchandise, declines to pay the purchase price, although no effort is made to enforce the covenant which is claimed to be illegal.

As is said in *Hammon on Contracts,* §251, *et seq.*:

"Illegality may affect the whole or only a part of an agreement, and the legal part may or may not be severable from the illegal. Generally speaking, if the agreement is indivisible, partial illegality vitiates the whole transaction; but if the agreement is divisible, so that there is a complete right outside of what is illegal, the agreement is void only *pro tanto,* and not wholly nugatory. The question whether a contract is entire or severable is to be determined by considering both the language and the subject matter of the contract. The

rule that the bad may be rejected, if separable, and the good retained, holds whether the illegality exists by statute or by common law."

Anson on Contracts (8th *ed.*), 206.
Pickering v. *Ilfracombe Ry. Co., L. R.*, 3 *C. P.*, 235, 250.
United States v. *Bradley*, 10 *Peters*, 343.
Hynds v. *Hays*, 25 *Ind.*, 31.

"On the other hand, if the bad is not separable, the entire agreement falls, regardless of the source of the law defining the illegality.

"In considering the effect of partial illegality of consideration, we may regard an agreement as taking on one of four forms. It may consist in (1) one promise given upon one consideration; (2) one promise given upon several considerations; (3) several promises given upon one consideration; or (4) several promises given upon several considerations.

* * * * * * * *

"(3) If an agreement consist of several promises, based upon one consideration, the illegality of the consideration vitiates all the promises. However, and this is important, if the consideration is valid, the illegality of one or more of the promises will not avoid the rest, provided that those which are otherwise valid are severable from the others.

Kerrison v. *Cole*, 8 *East*, 231.
Gelpcke v. *City of Dubuque*, 1 *Wall.*, 221.
Gaskell v. *King*, 11 *East*, 165.
Erie Ry. Co. v. *Union Locomotive & Exp. Co.*, 35 *N. J., Law*, 240.
Baines v. *Gearey*, 35 *Ch. Div.*, 154.
Wallis v. Day, 3 *Mees. & W.*, 273.

Haynes v. *Doman, L. R.* (1899), 2 *Ch.*, 13.
Oregon Navigation Co. v. *Winsor,* 20 *Wall.*, 64.
Western U. T. Co. v. *Burlington & S. W. Ry. Co.,* 11 *Fed. Rep.*, 1.
Presbury v. Fisher, 18 *Mo.*, 50.

"Ordinarily a contract is severable where the price is expressly apportioned by the contract, or the apportionment may be applied by law to each item to be performed.

Moore v. *Bonnet,* 40 *Cal.*, 251.

"A promise in the alternative, one branch of which is lawful and the other unlawful, is enforceable as to the lawful alternative.

Hanauer v. Gray, 25 *Ark.*, 350.

"Thus, taking an agreement in restraint of trade as an illustration, if the restraint is applied in the agreement to a reasonable space, and also extended to an unreasonable space, the agreement is divisible and may be enforced as to the reasonable restraint.

Price v. Green, 16 *Mees. & W.*, 346.
Wiley v. Baumgardner, 97 *Ind.*, 66.
Dean v. Emerson, 102 *Mass.*, 480.
Peltz v. Eichele, 62 *Mo.*, 171.
U. S. v. Bradley, 10 *Pet.*, 343, 360, 364.
Trenton Potteries Co. v. Oliphant, 58 *N. J. Eq.*, 507; *s. c.*, 46 *L. R. A.*, 255.
Thomas v. Miles, 3 *Ohio St.*, 274.
Smith's Appeal, 113 *Pa.*, 579.

"Care must be taken not to confound this rule with the one just considered, namely, that where one of two considerations is illegal, and the other

legal, the illegality of the one avoids the promise founded on both. In the case now under discussion there is one lawful consideration to support two promises, one legal, the other illegal, that are separable.

* * * * * * *

"The result of the rules that partial illegality of consideration vitiates a promise founded thereon, and that the illegality of one of several saparable promises, based upon the same consideration, does not affect the validity of the others, is to make the validity of an agreement consisting of mutual promises depend upon which party seeks to enforce it. Thus A promises B $100 in consideration of B's promise to do two acts, one of which is lawful and the other unlawful. A may come into court and enforce the lawful one of B's promises. B, however, cannot enforce A's promise, because it is founded on a consideration which is in part illegal.

Bishop v. Palmer, 146 *Mass.*, 468.
Wald, Pollock on Contracts, 321, *note.*
King v. King, 63 *Ohio St.*, 363; *s. c.*, 52 *L. R. A.*, 157.

"(4) In case an agreement is divisible into several promises based upon several considerations, the illegality of one or more of the considerations could not avoid all the promises if those which were made upon legal considerations are severable from the others.

Leavitt v. Palmer, 3 *N. Y.*, 19, 37."

In *Oregon Steam Navigation Co. v. Winsor* (20 *Will.*, 64), which has been considered under the last Point, the Oregon Company secured from Winsor a covenant that he would not use the steamer which he purchased for navigating the waters of California for a period of ten years from 1867, although the Oregon Company was under

covenant to the California Company which restricted it from navigating to California waters for ten years from 1864 only. Consequently it was claimed that the covenant exacted from the defendant for a period of three years in excess of that for which the Oregon Company was bound avoided the entire covenant. This contention was, however, rejected by this Court, it being held that the covenant was so divisible in regard to the California portion that it could stand for the seven years for which the Oregon Company was bound to protect the California Company, even though it was void as to the remaining three.

Dealing with this feature of the case, Mr. Justice Bradley said:

"It is laid down by *Chitty* as a result of the cases, and his authorities support the statement, 'that agreements in restraint of trade, whether under seal or not, are divisible; and, accordingly, it has been held that when such an agreement contains a stipulation which is capable of being construed divisibly, and one part thereof is void as being in restraint of trade, whilst the other is not, the Court will give effect to the later and will not hold the agreement to be void altogether.' * * * We see no reason why this principle should not be followed in the present case. The line of division between the period which is properly covered by the restriction and that which is not so is clearly defined and easily drawn."

In *Cincinnati Packet Co.* v. *Bay, 200 U. S., 179, 185*, an action was brought on a contract to recover an instalment of money due on the sale of a number of steamers, barges, coal flats and other property. The vendor agreed that for a period of five years he would not engage in any freight or passenger packet business between Cincinnati

and Portsmouth, Ohio, and intermediate points, nor at points between Syracuse and Portsmouth, Ohio, to or for points *below* Portsmouth, Ohio, with a qualification as to the towing and barge business, so long as it did not interfere with the vendee's freight and passenger business from Portsmouth to Cincinnati. The contract contained the further provision:

"It is also understood in this agreement that the party of the second part will maintain the rates charged by the parties of the first part on business *above* Portsmouth, Ohio, said rates, however, never to exceed railroad rates between said points."

This covenant was relied upon to make the contract illegal as in restraint of trade, and to absolve the purchaser from the payment of the contract price. Mr. Justice Holmes disposed of this objection by saying:

"It only remains to say a word as to the agreement to maintain rates. This is a covenant by the purchaser, the plaintiff in error. It is not the covenant sued upon. It is not declared to enter into the consideration of the sale. If necessary, we should be astute to avoid allowing a party to escape from his just and substantially legal undertaking on such ground. The argument on the other side requires us to import a subordinate undertaking of the buyer into consideration for that which was the consideration of his debt, and in that roundabout way to make the debt unlawful. We should not go into such niceties beyond noticing that they are not encouraged by the cases. *Oregon Steam Navigation Co.* v. *Winsor, 20 Wall., 64; Bank of Australasia* v. *Breillat, 6 Moore, P. C., 152, 201; Pigot's Case, 11 Co. Rep., 26b, 27b.*"

In *Western Union Telegraph Co.* v. *Burlington*

& Southwestern Ry. Co. (11 *Fed. Rep.*, 1) a contract was entered into between the parties for the construction and operation of a telegraph line upon the railway company's right of way and regulating the rights of the railway company and the telegraph company with regard to such line, with which the purchaser at the foreclosure sale of the railway property sought to interfere. A suit was brought to enjoin the purchaser from preventing the telegraph company from using the line in accordance with the terms of the contract.

Among other clauses contained in the contract was one which gave to the telegraph company the exclusive right of way on and along the line of the railway for the construction and use of such telegraph lines for commercial and public purposes, and whereby the railway company agreed that it would not transport any material for the construction of a line of telegraph in competition with the line of the plaintiff, except at certain rates, nor stop its trains, nor distribute material for such parties or their employees at other than regular stations. This covenant was held to be void as in restraint of trade and contrary to public policy, as well as in contravention of the act of Congress.

It was nevertheless held that this void provision did not invalidate the entire contract and justify the court in withholding the equitable relief for which the plaintiff prayed. Judge McCrary said:

"We are, however, inclined to the opinion that the invalidity of this provision of the contract does not render the entire agreement null and void. The contract embraces several distinct promises on the part of the railroad company, besides the one respecting the exclusive right of way; as, for example (1) that it will furnish and distribute the poles; (2) that it will furnish laborers to erect

the line; (3) that it will maintain the poles in good order and keep the wires in good repair; (4) that it will furnish office room at its railway stations; (5) that the telegraph company shall control the commercial telegraphing along the line, and receive the proceeds thereof; and numerous other engagements of like character. The considerations for these promises, and for the additional legal promise concerning the exclusive right of way, was certain promises on the part of the telegraph company, all of which are legal. It is, therefore, a case in which the railroad company makes a number of promises to the telegraph company, one of which promises is illegal, but all the others legal, in consideration of certain promises on the part of the telegraph company, all of which are legal. The rule respecting such a contract is thus stated in Smith, Leading Cas. Hare & Wall, notes, 5th Am. Ed., 502: 'In cases where the consideration is tainted by no illegality, but some of the promises are illegal, the illegality of those which are bad does not communicate itself to or contaminate those which are good, except where, in consequence of some peculiarity in the contract, its parts are inseparable or dependent upon one another.' "

In a note to this case by the late Francis Wharton, that learned writer says:

"Assuming, however, the invalidity of this special stipulation, the conclusion of Judge McCrary, that other stipulations are not thereby invalidated, cannot be assailed. When there are several stipulations in a particular agreement, the fact that one of those stipulations is illegal does not defeat a recovery on the others when the stipulations are divisible and the consideration is not in itself illegal."

To the same effect are

Cook v. *Sherman*, 20 *Fed. Rep.*, 167.

Lincoln, S. B. & S. D. Co. v. *Allen*, 82 *Fed Rep.*, 148.

In *Erie Railway Co.* v. *Union Locomotive & Express Co.* (35 *N. J. Law*, 240) it was held that where a contract is for the doing of two or more things which are entirely distinct, and one of them is prohibited by law and the others are legal, such illegality of the one stipulation cannot be set up as a bar to an action for a breach of one of the valid stipulations.

There, the firm of Kasson & Company, who were the assignors of the Union Locomotive & Express Company, entered into an agreement to provide cars and trucks sufficient in size, strength, weight and capacity whereon to carry all locomotive engines and tenders, and that they would be at the expense of loading and unloading the same; and for the motive power, which was to be supplied by the Erie Railway Company, the defendants, and for the unusual wear and strain of their railway, a certain compensation, which was stated in said articles of agreement, was promised to be paid. On their side, the Erie Railway Company agreed, in addition to the stipulations for providing motive power and giving the use of the road, that the cars of Kasson & Company should be the only cars employed in the transportation of locomotive engines and tenders.

This latter provision was treated as void, but it was nevertheless held that the Union Locomotive & Express Company, as the assignee of Kasson & Company, were entitled to maintain an action for damages occasioned by breach of the contract on the part of the Erie Railway Company.

The eminent jurist, Chief Justice Beasley, said:

"Let it be granted that the provision in question is illegal, and therefore void, still such concession cannot, in the least degree impair the plaintiff's right of action. The suit is not for a breach of this promise of the defendants, that no other cars than those of the plaintiffs shall be employed in this branch of the carrying business, but it is for the refusal of the defendants to permit the plaintiffs to transport locomotives and tenders according to their contract, over the railway of the Erie Company. This latter stipulation, the violation of which forms the ground of action, is distinct and entirely separable from the former one, in which it is alleged the illegality before mentioned exists. Admitting, then, for the purpose of the argument, the illegality insisted on, the legal problem plainly is this: Whether, when a defendant has agreed to do two things, which are entirely distinct, and one of them is prohibited by law, and the other is legal and unobjectionable, such illegality of the one stipulation can be set up as a bar to a suit for a breach of the latter and valid one. This point was but slightly noticed on the argument; nevertheless, an examination of the authorities will show that the rule of law upon the subject has from the earliest times been at rest. It was unanimously agreed in the case reported in the *Year Books,* 14 *Henry VIII.*, 25, 26, that if some of the covenants of an indenture, or of the conditions endorsed upon a bond are against law, and some good and lawful, that in such case, the covenants or conditions which are against law are void *ad initio*, and the others stand good. And from that day to this, I do not know that this doctrine, to the extent of its applicability to this case, has anywhere been disallowed. It was the ground of the judgment in Chesman *v.* Nainby, 2 Lord Raymond, 1456, that being a suit on an apprentice's bond. The stipulation alleged to have been broken was that the apprentice would not carry on the business in which she was to be instructed within 'the space of half a mile' of the then dwelling house of the

plaintiff. There was also a further stipulation that she should not carry on this business within half a mile of any house into which the plaintiff might remove. The suit was for a breach of the former stipulation, and it was admitted that the latter one was void as imposing an unreasonable restraint upon trade, and it was urged that, by force of this illegal feature, the whole contract was void. But the Court were unanimously of opinion that as the breach was assigned upon that part of the condition which was good in law, therefore if the other part, to which exception was taken, was against law, yet that would not hinder the recovery upon part of the condition which was legal. This judgment was afterwards affirmed by the twelve judges, on an appeal to parliament. * * *

"These and other authorities which might be referred to, settle the rule, that the fact that one promise is illegal will not render another disconnected promise void. The doctrine will not embrace cases where the objectionable stipulation is for the performance of an immoral or criminal act, for such an ingredient will taint the entire contract and render it unenforceable in all its parts by reason of the maxim *ex turpi causa non oritur actio.*"

The principle of this case is directly in point here. The petitioner agreed to sell to the defendant certain merchandise at an agreed price. The latter agreed to pay for the merchandise received the stipulated price, and also agreed that it would not sell such merchandise at a lesser price than that specified in the contract.

If the latter condition was void, it was then not binding upon the defendant; but, as has been seen, such invalidity would not absolve the defendant from liability on its covenant to pay for the merchandise delivered.

It will be noted that this is not a case where the

element of illegality is involved in the consideration which passes from the petitioner. It merely relates to one of two promises made by the defendant, one of which is entirely valid, and the other of which we will assume was not enforceable against it. There is here no attempt to enforce the alleged illegal stipulation. That does not enter into the petitioner's cause of action, which is confined to an attempt to recover the agreed purchase price of the merchandise delivered to the defendant.

This doctrine of the divisibility of covenants has been recognized by the Supreme Court of Ohio in *Lange* v. *Werk*, 2 *Ohio St.*, 519, 531.

In *Stewart* v. *Lehigh Valley R. R. Co.* (38 *N. J. Law*, 505) a Canal Company made a covenant with the plaintiff to give him a drawback on all freight shipped by him, and to give no drawback to anybody else who competed with him. The former covenant being valid, although the latter was void, was held to be enforceable.

See also—

Greenhood on Public Policy, pp. 20, 21.

VI.

We do not concede that the petitioner was a trust or unlawful combination within the meaning of the state or federal statutes.

It is true that the answer with great verbosity charges the petitioner with the violation of va-

rious statutes and with numerous acts of wrongdoing. But, as was said by Chief Justice Fuller in *Kent* v. *Lake Superior Canal Co.* (144 *U. S.*, 91), "Epithets do not make out fraud and aver-"ments substantially of legal conclusions are not "admitted by a demurrer."

Neither does the statement of a conclusion that a corporation organized according to the requirements of a statute is a trust or unlawful combination make it such.

The conclusions contained in the answer are in direct conflict with the documentary evidence which constitutes a part of the answer. From this it appears that the Continental Wall Paper Company, was organized for the purpose of dealing in wall paper; that it entered into a contract with various manufacturers to purchase their entire product for designated periods, at prices agreed upon and on conditions specified, none of which is violative of any provision of law. The conditions contained in the contract are such as are reasonably necessary to protect the vendor and the vendee. As will be seen from a careful consideration of the terms of this contract, which is Exhibit 2, it is in effect an agreement whereby the petitioner furnished a market for the various wall paper manufacturers who dealt with it and enabled them to avoid the expense incident to the maintenance of a selling department in connection with the business which they respectively conducted.

Such an arrangement is entirely legitimate. It has none of the elements of the combination which was declared illegal in *United States* v. *Addystone Pipe & Steel Co.* (85 *Fed. Rep.*, 271; *aff'd.* 175 *U. S.*, 211) and other cases relied upon by the defendants. There was no limit placed upon the

production of the various manufacturers. Each of them had the right to sell all of his product to a single customer, and that customer had the right of purchasing the product of all and of disposing of it at such prices and on such terms and conditions as to him were deemed advantageous.

There is nothing in the anti-trust legislation thus far enacted which prohibits any number of manufacturers from disposing of all of their product to a single dealer, or which makes it unlawful for the latter to contract for the full limit of the productive capacity of those manufacturers. Such a contract no more constitutes a trust than would a dealer who purchases all of the grain, wool or apples produced in a given territory or than would a commission merchant, who acts as the broker for a large number of mills, in the disposition of their products.

It is true that the stock in the Continental Wall Paper Company was largely owned by manufacturers who entered into contracts with the plaintiff which enabled the latter to distribute the product of such manufacturers. But that circumstance involved no element of illegality. Each of them had the legal right to acquire stock in the plaintiff corporation, and what each of them could do all of them had the right to do. It was no more unlawful for them to become stockholders in the corporation which undertook to handle their product than it would have been for them to have become stockholders in a bank which furnished them with the capital for carrying on their several factories.

In *Bohn* v. *Hollis* (*54 Minn., 233*), the Court said:

"What one man may lawfully do singly, two

or more men may lawfully agree to do jointly. The number who unite to do the act cannot change its character from lawful to unlawful. The gist of a private action for the wrongful act of many is not the combination or conspiracy, but the damage done or threatened to the plaintiff by the acts of the defendants. If the act be unlawful the combination of many to commit it may aggravate the injury but cannot change the character of the act. * * * Hence the fact that the defendants associated themselves together to do the act complained of is wholly immaterial in this case."

Without undertaking to enlarge upon this phase of the case, it is sufficient to call attention to

Mogul S. S. Co. v. *McGregor, L. R.* (1892), *App. Cas.*, 25.
In re Green, 52 *Fed. Rep.*, 104.
Dueber Watch Case Mfg. Co. v. *E. Howard Watch & Clock Co.*, 66 *Fed. Rep.*, 637.
Continental Ins. Co. v. *Board of Fire Underwriters*, 67 *Fed. Rep.*, 310.
Whitwell v. *Continental Tobacco Co.*, 125 *Fed. Rep.*, 689.
Olmstead v. *D. & C. F. Co.*, 77 *Fed. Rep.*, 265.
Denneky v. *McNulta*, 86 *Fed. Rep.*, 825.

In a number of recent cases it has been held that the mere fact that a corporation has purchased a large number of plants throughout the country does not constitute a violation of the Anti-Trust Law.

Coquard v. *National Linseed Oil Co.*, 171 *Ill.*, 480.

Trenton Potteries Co. v. *Olyphant*, 43 *Atl., Rep.*, 723; *modifying* 56 *N. J. Ex.*, 680.

Oakdale Mfg. Co. v. *Garst*, 18 *R. I.*, 484.

Meredith v. *N. J. Zinc & Iron Co.*, 55 *N. J. Eq.*, 211.

It has also been held that a contract whereby a manufacturer grants to a firm the exclusive right to sell his product is not unlawful.

Columbia Carriage Co. v. *Hatch*, 47 *S. W. Rep.*, 288.

VII.

Again assuming that the petitioner is a trust violative of Senate Bill No. 336 of the General Laws of Ohio for 1898, yet such violation does not debar a recovery for the goods sold to the defendant, there being no prohibition in the act against such recovery.

VIII.

But even should that act undertake to prohibit a recovery it would as to the petitioner be unconstitutional and void as an attempt on the part of the State of Ohio to regulate commerce between the several States.

The petitioner is a New York corporation. The defendants transact business in Cleveland, Ohio. The contract between them was made in New York, and under the terms of the jobbers' agreement which is annexed to the answer the petitioner was to deliver the goods purchased by the defendants f. o. b. at New York or Philadelphia. The delivery of the goods therefore was outside of the State of Ohio, and the goods were to be shipped into that State. Hence the transaction between the parties was one of inter-state commerce and is beyond the purview of state legislation.

While it is within the power of the State of Ohio to discipline its own corporations and to prohibit a foreign corporation from doing business within its boundaries, it is not within its power to punish criminally, or by forfeiture of property, the act of a foreign corporation which sells its goods to a citizen of Ohio under a contract involving the transportation of goods from without that state into its domain.

If the Act of Congress applies to these transactions, that of Ohio cannot be applicable.

Minnesota v. *Barber*, 136 *U. S.*, 313;
Brunner v. *Rebman*, 138 *U. S.*, 78;

Voight v. *Wright*, 141 *U. S.*, 62;
People v. *Hawkins*, 157 *N. Y.*, 1;
People ex rel. Friat v. *Coler*, 166 *N. Y.*, 1;
Addyston Pipe Co. v. *U. S.*, 175 *U. S.*, 241;
Hopkins v. *U. S.*, 171 *U. S.*, 578;
Haldy v. Tomvor Haldy Co., 4 *Ohio, Dec.* 118.
Caldwell v. *North Carolina*, 187 *U. S.*, 632.
Hadley-Dean Mal. Glass Co. v. *Highland Glass Co.*, *143 Fed. Rep.*, *242; U. S. C. C.; App.*, *8th Circuit.*

IX.

There is nothing in the Statutes of the State of New York, which are invoked by the defendants, which prevents a vendor though a trust from recovering for goods sold.

It is needless therefore to consider whether or not this act has any extra-territorial effect, and whether the Federal Court sitting in Ohio would undertake to enforce the public policy of the State of New York should the statute under consideration have undertaken to prevent a trust or monopoly from recovering on a contract for goods sold and delivered, which, as has been seen, it did not undertake to do.

The weight of authority indicates that such an

act cannot be enforced beyond the boundaries of the State, in which it has been enacted.

Greer Mills Co. v. *Stoller*, 77 *Fed.*, 1;
In re Grice, 79 *Fed. Rep.*, 627.

X.

It is respectfully submitted that a writ of certiorari as prayed for, should be issued.

Louis Marshall,
Joseph Wilby,
Petitioner's Counsel.

Supreme Court of the United States,

OCTOBER TERM, 1908.

No. 15.

Office Supreme Court, U. S.
FILED.
NOV 20 1908
JAMES H. McKENNEY,
Clerk.

CONTINENTAL WALL PAPER COMPANY,

Petitioner,

against

THE LEWIS VOIGHT & SONS COMPANY,

Respondent.

Notice and Petition for Writ of Certiorari for a Diminution or Correction of the Record.

LOUIS MARSHALL,

Petitioner's Counsel.

B. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.

Supreme Court of the United States,

OCTOBER TERM, 1908.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

vs.

THE LEWIS VOIGHT & SONS COMPANY.

No. 15. 2

Gentlemen:—Please take notice that the above-named petitioner, Continental Wall Paper Company, will present the annexed petition and the affidavits and exhibits thereto attached, together with the record in this cause, at a session of the Supreme Court of the United States to be held at the Capitol in the City of Washington, D. C., 3 on Monday, the twenty-third day of November, 1908, at twelve o'clock noon, or as soon thereafter as counsel can be heard, and will then and there apply to the Court and ask that a writ of certiorari for a diminution of the record may be granted, so as to strike from the petition herein words purporting to constitute an allegation, that the petitioner was organized and incorporated under the laws of the State of Ohio, as well as under the

February, 1900. A certified copy of said petition as filed, is attached to the affidavit of Joseph Wilby, verified November 11, 1908, hereto annexed. A summons was duly issued after the filing of said petition, which described the petitioner as a "citizen of and resident in the State of New York." (Record, p. 38.) This summons was served on the respondent on February 24, 1900.

Second.—Thereafter and on March 24, 1900, the defendant moved for an order requiring the plaintiff to make its petition more definite and certain in various particulars. On April 7, 1900, said motion was granted in part and overruled in part. Thereafter from time to time orders were made extending the time of the plaintiff to make the petition more definite and certain, and on August 29, 1900, an amendment to the petition was filed. (Record, pp. 38-41.)

Third.—Thereafter and on February 12, 1901, the defendant filed an answer to the petition and amendment thereof, in which the said defendant admitted that the petitioner was a corporation created, organized and existing under the laws of the State of New York, and a citizen and resident of said State. (Record, p. 351.)

Fourth.—On December 12, 1901, the petitioner filed a replication to the said answer, in which it admitted that it was organized under the laws of the State of New York in the year 1898 with a capital stock of Two hundred thousand Dollars ($200,000), divided into sixteen thousand (16,000) shares of the par value of $12.50 each, as alleged in said answer. On August 22, 1902, a motion for

leave to withdraw said replication was granted. 13
Thereafter, on October 25, 1902, the respondent served an amended answer and cross-petition, in which it admitted that the petitioner was ostensibly a corporation created, organized and existing under the laws of the State of New York, and a citizen and resident of said State. (Record, pp. 374, 378, 379.)

Fifth.—On January 19, 1903, the plaintiff demurred to the amended answer (Record, p. 434). In various parts of the amended answer, and in the exhibits thereto attached, it is alleged that the petitioner was a corporation organized under 14
the laws of the State of New York.

Sixth.—In none of the proceedings, nor on any of the hearings herein, was the question suggested that the petitioner was other than a corporation organized under the laws of the State of New York, and as a matter of fact it is and has always been a corporation organized under the laws of said State, and has never been organized or incorporated under the laws of the State of Ohio.

Seventh.—Your petitioner further alleges, on 15
information and belief, that the words "Ohio and," as they appear in the petition herein as printed in the Transcript of Record in this cause at page 2, did not appear in the petition as filed in the office of the clerk of the United States Circuit Court for the Southern District of Ohio, Western Division; that the word "Ohio" alone appeared before the word "New York," without the intervention of the word "and" in the peti-

tion as it was struck off by the typewriter, but that before said petition was filed the word "Ohio" was stricken out in ink, and that the words "Ohio and" appeared in the Transcript as printed as a result of a clerical error on the part of the copyist in the office of the clerk of the United States Circuit Court for the Southern District of Ohio, and not by reason of any act of the petitioner or anybody representing it. As proof of said allegation, the petitioner refers to the affidavit hereto annexed of Joseph Wilby, verified November 11, 1908, together with the certified copy of the original petition herein as on file in the office of the clerk of the United States Circuit Court for the Southern District of Ohio, Western Division, the affidavit of George W. Hays, Jr., verified November 11, 1908, who in February, 1900, at the time of the filing of said petition, was assistant clerk in said office, the certified copy of the said petition as it appears in the transcript of the record of the Circuit Court of the United States for the Southern District of Ohio, as it appears from the files of the United States Circuit Court of Appeals for the Sixth Circuit, and the affidavit of Louis Marshall, verified November 13, 1908.

Eighth.—Your petitioner further alleges, that this action has now been pending for nearly nine years, that the respondent has gone out of business and is in process of liquidation, and that a new action will either be barred by the Statute of Limitations, or would be ineffective; and that a dismissal of the petition herein on the ground of want of jurisdiction, based on the appearance of the words "Ohio and" in the printed transcript of rec-

ord as a result of the error, inadvertence and mistake aforesaid, would result in a miscarriage of justice.

WHEREFORE, your petitioner prays that a writ of certiorari for a diminution or correction of the record herein may issue out of and under the seal of this Court, so as to strike from the petition herein the words which cause the same to apparently allege that the petitioner was organized and incorporated under the laws of the State of Ohio, as well as under the laws of the State of New York, or that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem proper and in conformity with justice.

And your petitioner will ever pray.

CONTINENTAL WALL PAPER COMPANY,
By LOUIS MARSHALL,
Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:
County of New York,

LOUIS MARSHALL, being first duly sworn, deposes and says: I am the solicitor and counsel for the Continental Wall Paper Company, the petitioner herein. I have read the foregoing petition for writ of certiorari for diminution of the record, and know the contents thereof, and the same is true to my own knowledge except as to the matters therein stated to be alleged upon in-

formation and belief, and as to those matters I believe it to be true.

LOUIS MARSHALL.

Subscribed and sworn to before me this 13th day of November, 1908.

EDWARD M. NEARY,
Notary Public, Kings County.

Certificate filed in New York County.

(Notarial Seal.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

vs.

THE LEWIS VOIGHT & SONS COMPANY.

No. 15.

UNITED STATES OF AMERICA,
State of New York,
County of New York, } ss.:

LOUIS MARSHALL, being duly sworn, says:

I am counsel for the above named petitioner, and have had charge of this action since the time

when the demurrer herein was interposed to the answer served by the defendant. No question as to the jurisdiction of the Circuit Court of this cause had ever been suggested until the announcement was made by this Honorable Court on November 9, 1908, that briefs of counsel would be received on or before November 23d, on the question of the jurisdiction of the Circuit Court as affected or controlled by the allegations in the petition that the plaintiff is a corporation duly created, organized and existing under the laws of Ohio and New York, and that the defendant is a corporation created, organized and existing under laws of Ohio.

This action was commenced on February 24, 1900, for the recovery of Fifty-seven thousand, seven hundred and sixty-two and 10/100 Dollars ($57,762.10), with interest from July 29, 1899. The defendant is in process of liquidation. A new action will either be barred by the Statute of Limitations, or would be ineffective.

During the years that I have been connected with this case, I never observed that any possible question as to jurisdiction could arise. My office copy of the petition, which was prepared by Messrs. Kittredge & Wilby and in which "Ohio," stricken out in ink, appears as the last word on the fourth line, corresponds exactly with the certified copy of the petition annexed to the affidavit of Joseph Wilby herein, verified November 11, 1908. Through the error of a typewriter, the word "Ohio" appeared immediately before the word "New York" in the allegation as to the incorporation of the plaintiff. The conjunctive word "and" did not appear, and the word

28 "Ohio" was stricken out in ink, so that the allegation as originally typewritten read:

"Now comes The Continental Wall Paper Company, plaintiff above named, and says that it is and at all times hereinafter set forth has been, a corporation duly created, organized and existing under the laws of the State of Ohio New York, and a citizen and resident of said State of New York."

The word "Ohio" was, however, stricken out, so that the allegation remained that the plaintiff was "a corporation duly created, organized and existing under the laws of the State of New York,
29 and a citizen and resident of said State of New York."

As printed in the transcript, the words "Ohio *and*" appear.

As shown by the aforesaid office copy, the word "and" never formed a part of the sentence as typewritten, and as already stated, the word "Ohio" was stricken out in ink, and the allegation as to the incorporation of the plaintiff was immedately followed by the words: "and a citizen and resident of *said* State of New York." This last allegation also appears in the printed record.

30 It is thus obvious, that the pleader did not intend to allege that the plaintiff was incorporated under the laws of Ohio, but solely under the laws of New York.

The exhibit attached to the petition consists of various bills for merchandise (Record, pp. 3-37), and at the head of the bills appear the words:

"*New York,* Nov. 30, 1899.
Lewis Voight & Sons Company,
Cincinnati, Ohio.
In Account with The Continental Wall Paper Co.,
1135 Broadway."

The summons which was issued out of the clerk's office of the United States Circuit Court on the filing of the petition, appears Record, p. 38, and reads as follows: 31

"You are hereby commanded to notify The Lewis Voight & Sons Company, a corporation citizen of and resident in the State of Ohio, if it be found in your District, that it has been sued by The Continental Wall Paper Company, a corporation Plaintiff, *citizen of and resident in the State of New York,*" &c.

The original answer filed in the office of the Clerk of the United States Circuit Court for the Southern District of Ohio on February 12, 1901, (Record, p. 351), alleges: 32

"First defense: It (the defendant) admits that the Lewis Voight & Sons Company is a corporation created, organized and existing under the Laws of the State of Ohio and a citizen and resident of said State and that the plaintiff purported to be at the times set forth in said petition and amendment to the petition *a corporation created, organized and existing under the Laws of the State of New York* and a citizen and resident of said State."

Obviously, if the original petition had alleged that the plaintiff was organized and existing under the laws of the States of Ohio and New York, the admission in the answer would have been entirely different, and the question of jurisdiction would undoubtedly have been raised. 33

As a matter of fact, the Continental Wall Paper Company was organized under the laws of the State of New York, and never was organized under the laws of the State of Ohio, or of any other State than New York.

34 The answer further shows, Record, p. 354, that the Continental Wall Paper Company, the plaintiff herein, was to be organized under the laws of the state of New York. It also alleges that, on or about the ——day of July, 1898, the said agreement was carried out, and that the said Continental Wall Paper Company was organized under the laws of the State of New York as a corporation. (Record, p. 355.)

The form of the Jobbers' agreement of the first class, which is set forth in the answer, bears the introductory words:

35 "Agreement made this —— day of —— in the year one thousand eight hundred and ninety-eight between the Continental Wall Paper Company, *a corporation organized under the laws of the State of New York* (hereinafter called the Company) party of the first part," &c. (Record, p. 356.)

In characterizing the plan under which the Continental Wall Paper Company was organized, the answer alleges, Record, p. 360, that in transacting the business set forth, the plaintff acted "contrary to the provisions and each thereof of the Acts of the General Assembly of the State of
36 New York where said plaintiff's company was organized."

Attached to the answer were various exhibits, in each of which the plaintiff is described as "a corporation organized under the Laws of the State of New York."

The amended answer contains the same admission as to the incorporation of the plaintiff under the laws of the State of New York (Record, p. 379), and the other allegations just refered to.

On page 4 of the respondent's brief in this Court, it is stated: 37

"In carrying this agreement (the agreement between the various manufacturers) into effect, the following plan was devised (Rec., pp. 389, 390): *The plaintiff coropration was to be organized under the laws of New York,* with a capital stock of Two hundred thousand Dollars ($200,000) divided into 16,000 shares of $12.50 each, for the ostensible purpose of taking the entire output of wall paper to be manufactured."

On page 8 it is stated:

"The foregoing scheme was completely carried out." 38

The petition to this Court for the writ of certiorari contains the allegation, that the petitioner the Continental Wall Paper Company is a corporation duly organized under the laws of the State of New York, and a citizen of said State.

It is thus not only the fact that the plaintiff corporation was incorporated solely under the Laws of the State of New York, but the petition as filed contained that allegation, and no other. The answer admits this to be the fact, and the exhibits attached thereto and forming a part thereof expressly so declare; and the brief of the respondent has so stated. 39

Owing to the fact that no question of jurisdiction was at any time raised, and that I knew that the petitioner was organized under the laws of the State of New York, and no other State, and that my attention was solely devoted to the consideration of the questions arising on the demurrer to the answer, and to the consideration of the various exhibits which were made part thereof, in

which the statement was frequently repeated that the petitioner was a corporation organized under the laws of the State of New York, my attention was never called to the fact that the transcript of record as printed purported to allege that the petitioner was organized under the laws of the States of Ohio and New York, until on Wednesday, November 11, 1908, when I received from the Clerk of this Court the aforesaid announcement made by this Honorable Court as to the reception of briefs on the question of jurisdiction. As soon as I received said notice, I telegraphed to Mr. Joseph Wilby, of the firm of Kittredge & Wilby, of Cincinnati, Ohio, one of the attorneys for the petitioner herein, asking him to investigate the records for the purpose of ascertaining what the facts were, and I caused the examination aforesaid to be made of my office copy of the petition. As soon as I learned the facts I proceeded with the preparation of the petition for a writ of certiorari for a diminution or correction of the record herein.

The Court is therefore respectfully asked to grant a writ of certiorari for the diminution of the record, so that the error in the printing of the record, so far as the petition as printed contains the words "Ohio and," may be corrected in the interests of justice.

LOUIS MARSHALL.

Subscribed and sworn to before me this 13th day of November, 1908.

EDWARD M. NEARY,
Notary Public,
Kings County.

Certificate filed in New York County.
[NOTARIAL SEAL.]

SUPREME COURT OF THE UNITED STATES. 43

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

vs.

THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

October Term, 1907, No. 212.

October Term, 1908. Nov. 15. 44

AFFIDAVIT OF JOSEPH WILBY IN MATTER OF ERROR IN TRANSCRIPT.

State of Ohio, Hamilton County, ss.:

JOSEPH WILBY, being first duly sworn, says that he is now an attorney-at-law in the City of Cincinnati, and has been such and a member of the bar of the United States Circuit Court for the Southern District of Ohio, and of the Supreme Court of the United States, for more than twenty-five years last past; that he is now and was on and before the date of the filing of the original petition in the case of Continental Wall Paper Co. *vs.* The Lewis Voight & Sons Company, No. 5421, in the United States Circuit Court, for the Southern District of Ohio, Western Division, a certified copy of which is hereto attached and made a part hereof, marked "Exhibit A," one of the attorneys for the said plaintiff, the Continental Wall Paper Company, and continued as 45

such counsel from the date of the filing of said petition until the present time.

Affiant further says that he personally drew and prepared and personally filed, in February, 1900, with the Clerk of the said United States Circuit Court, the original petition in said cause, shown in Exhibit A hereto attached; and that the said original petition when so filed by this affiant in said Circuit Court was, without any doubt, in all respects as to its language and allegations, the same and in the exact language as the same appears in said certified copy hereto attached as Exhibit A; and never has been changed, or corrected or in any wise altered by this affiant, or by the direction or with the knowledge of this affiant:

And this affiant says that he believes there is absolutely no doubt that the word "Ohio" shown in the fourth line of said Exhibit A hereto attached, in the description of the State in which the plaintiff company was incorporated, had been stricken out of said original petition prior to the time of its filing, just as it appears to-day, so stricken out, on said original petition still on file in said Circuit Court.

But affiant is unable, and therefore unwilling, to make oath of actual recollection as to this or any other language in said original petition at the time of its filing, because of the lapse of time; but has no more doubt of the facts above stated than of the fact that said petition was on a certain day in February, 1900, filed in said United States Circuit Court in said cause.

And further affiant saith not.

JOSEPH WILBY.

Subscribed in my presence and sworn to before me, this eleventh day of November, A. D. 1908.

JOHN J. TAYLOR,
Notary Public,
Hamilton County, Ohio.

[SEAL.]

Exhibit "A."

49

THE UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF OHIO,

WESTERN DIVISION.

THE CONTINENTAL WALL PAPER CO.

vs.

THE LEWIS VOIGHT & SONS COMPANY.

Petition 5421.

50

Now comes The Continental Wall Paper Company Plaintiff above named, and says that it is and at all times hereinafter set forth has been, a corporation duly created, organized and existing under the laws of the State of ~~Ohio~~ New York, and a citizen and resident of said State of New York; and that the defendant above named, The Lewis Voight & Sons Company, is a corporation created, organized and existing under the laws of the State of Ohio, and a citizen and resident of the State of Ohio. 51

The Plaintiff above named, The Continental Wall Paper Company, says that the above named defendant, The Lewis Voight & Sons Company, is justly indebted to it, the said Plaintiff, in the sum of Fifty-Seven Thousand, Seven Hundred and sixty-two and 10/100 Dollars ($57-, 762.10), with interest thereon from the 29th day

of July, A. D., 1899, upon and as the balance of an account, for merchandise sold and delivered, a copy of which is hereunto annexed, and made part hereof, marked "Exhibit A", with all credits thereon.

WHEREFORE said plaintiff demands judgment against said defendant for the sum of Fifty-Seven Thousand Seven Hundred and sixty-two and 10/100 Dollars ($57,762.10) with interest thereon from the 29th day of July, A. D., 1899, and its costs.

KITTREDGE & WILBY,
GUGGENHEIMER, UNTERMYER & MARSHALL,
Attorneys for Plaintiff.

Counsel for Plaintiff,
SAMUEL UNTERMYER.

STATE OF NEW YORK, }
County of New York, } ss.:

ROBERT J. DYATT, being first duly sworn, says that he is Secretary of The Continental Wall Paper Company, the Plaintiff above named, and that the statements in the foregoing petition are true as he verily believes.

ROBERT J. DYATT.

Subscribed in my presence and sworn to before me, this fourteenth day of February, A. D., 1900.

P. M. HAMMOND,
[Notarial Seal] Notary Public, 16 N. Y. Co.,
New York County, New York.

UNITED STATES OF AMERICA,
Southern District of Ohio,
Western Division, } ss.:

I, B. E. DILLEY, Clerk of the said Court, do hereby certify that the foregoing is a true copy of the original on file in this office.

I further certify that the word "Ohio" is stricken out in the original in the same manner as appears in this copy.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Cincinnati, Ohio, this 11th day of November, A. D., 1908.

B. E. DILLEY,
Clerk.

By HARRY F. RABE,
Deputy Clerk.

[Seal of the Circuit Court Southern Dist. of Ohio.]

58 SUPREME COURT OF THE UNITED STATES.

CONTINENTAL WALL PAPER COMPANY, Petitioner,	October Term, 1907, No. 212.
vs.	
THE LEWIS VOIGHT & SONS COMPANY, Respondent.	October Term, 1908. Nov. 15.

59

AFFIDAVIT OF GEORGE W. HAYS, JR., IN MATTER OF ERROR IN TRANSCRIPT.

State of Ohio, Hamilton County, ss.:

GEORGE W. HAYS, Jr., being first duly sworn, says that he was at all times during the month of February, 1900, and for a long time prior thereto, and thereafter, employed in the office of the Clerk of the United States Circuit Court for the South-
60 ern District of Ohio, Western Division; that during the said month of February, 1900, and thereafter, he held the position of assistant clerk; that all of the pleadings filed in said office came under this affiant's supervision as such assistant clerk; and it was his duty to preserve and file away all such pleadings filed in said office.

Affiant further says that he has this day examined the original petition filed in said Circuit Court in the above entitled cause No. 5421 on the

docket of said Court, and that in said original petition in said cause the word "Ohio" at the end of the fourth line of said original petition as part of the allegation of the state of incorporation of the Continental Wall Paper Company, being the same word "Ohio" appearing scratched out in the middle of the fourth line of the certified copy of said petition Exhibit A attached to the affidavit of Joseph Wilby, had been stricken or scratched out with ink prior to the making of the transcript, so that the allegation with reference to the incorporation of the plaintiff read, in said original petition, at the time of the making of the transcript, as follows, to wit: 61 62

"Now comes the Continental Wall Paper Company, plaintiff above named, and says that it is and at all times hereinafter set forth, has been, a corporation duly created, organized and existing under the laws of the State of New York, and a citizen and resident of said State of New York."

And this affiant knows and remembers the foregoing facts, because it was part of his duty to, and he in fact did, attend to the counting of the words in said original petition just prior to the time that said transcript was made up, in order to estimate the cost of said transcript. 63

Affiant further says that he has to-day examined the original authenticated transcript of the record filed in the United States Circuit Court of Appeals for the Sixth Circuit with and as part of the proceedings on writ of error to said Court from the judgment in said cause in the said Circuit Court of the United States for the Southern District of Ohio, Western Division; and in the copy of said original petition appearing in said transcript, being the same petition set forth in said

64 Exhibit A attached to the affidavit of Joseph Wilby, in this matter, the words "Ohio and " appear by an error and inadvertence of the copyist or maker of said transcript, in the fourth line of said copy of said petition in said transcipt, interlined above the words "of New York", as appears in a certified copy of said petition as it appears in said transcript, hereto attached and made a part hereof, marked "Exhibit B".

Affiant further says that said words "Ohio and" as part of the description of the state where said Continental Wall Paper Company was incorporated, never appeared in the allegations of the
65 original petition filed in the United States Circuit Court, but appeared for the first time in the copy of said petition which was part of the transcript filed in the United States Circuit Court of Appeals, all as aforesaid.

Affiant further says that General B. R. Cowen, who was the Clerk of said United States Circuit Court, and Robert C. Georgi, who was his Chief Deputy at the time of the filing of said petition and at the time of the making of said transcript, have since deceased, and that this affiant is the only person now living who was connected with said Clerk's office at the time said original peti-
66 tion was filed, and who had charge of the papers filed therein.

And further affiant saith not.

GEORGE W. HAYS, Jr.

Subscribed in my presence and sworn to before me this Eleventh day of November, A. D., 1908.

JOHN J. TAYLOR,
[SEAL.] Notary Public,
Hamilton County, Ohio.

Exhibit "B."

67

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF OHIO.

Western Division.

THE CONTINENTAL WALL PAPER COMPANY,
Plaintiff,

vs.

THE LEWIS VOIGHT & SONS COMPANY,
Defendant.

Petition.
No. 68

Now comes the Continental Wall Paper Company, plaintiff above named, and says that it is and at all times hereinafter set forth has been, a corporation duly created, organized and existing under the laws of the State of Ohio and New York, 69 and a citizen and resident of said State of New York; and that the defendant above named, The Lewis Voight & Sons Company, is a corporation created, organized and existing under the laws of the State of Ohio, and a citizen and resident of the State of Ohio.

The Plaintiff above named, The Continental Wall Paper Company, says that the above named

70 defendant, The Lewis Voight & Sons Company, is justly indebted to it, the said plaintiff, in the sum of Fifty-Seven Thousand Seven Hundred and Sixty-two and 10/100 Dollars ($57,762.10), with interest thereon from the 29th day of July, A. D. 1899, upon and as the balance of an account, for merchandise sold and delivered, a copy of which is hereunto annexed and made part hereof, marked "Exhibit A," with all credits thereon.

Wherefore said plaintiff demands judgment against said defendant for the sum of Fifty-seven thousand seven hundred and sixty-two and 10/100 dollars ($57,762.10), with interest thereon from
71 the 29th day of July, A. D. 1899, and its costs.

KITTREDGE & WILBY,

GUGGENHEIMER, UNTERMYER & MARSHALL,
Attorneys for Plaintiff.

Counsel for Plaintiff,
SAMUEL UNTERMYER.

STATE OF NEW YORK,
County of New York, } ss.:

ROBERT J. DYATT, being first duly sworn, says that he is Secretary of The Continental Wall Pa-
72 per Company, the plaintiff above named, and that the statements in the foregoing petition are true, as he verily believes.

ROBERT J. DYATT.

Subscribed in my presence and sworn to before me, this Fourteenth day of February, A. D. 1900.

P. M. HAMMOND,
Notary Public, 16 N. Y. Co.
[SEAL.] New York County, New York.

UNITED STATES CIRCUIT COURT OF APPEALS 73

FOR THE SIXTH CIRCUIT.

I, FRANK O. LOVELAND, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the Petition as it appears in the transcript of record of the Circuit Court of the United States for the Southern District of Ohio, in the case of The Continental Wall 74
Paper Co. *vs.* The Lewis Voight & Sons Co. No. 1509, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said Court, at the City of Cincinnati, Ohio, this 11th day of November A. D. 1908.

FRANK O. LOVELAND,
Clerk of the United States Circuit Court of Appeals for the 75
Sixth Circuit.

(Seal of United States Circuit Court of Appeals, Sixth Circuit.)

76 SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 15.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

vs.

77 THE LEWIS VOIGHT & SONS COMPANY.

AFFIDAVIT OF JOSEPH WILBY.

STATE OF OHIO, *Hamilton County,* } ss.:

JOSEPH WILBY, being first duly sworn, says that he today examined a copy attested by the signature of the Clerk and the seal of the Court to be a true copy of the original petition in the United States Circuit Court, for the Southern District of
78 Ohio, Western Division, in the above entitled cause.

That said certified copy was, when so examined by this affiant, in the possession of Mr. M. R. Waite, of counsel for The Lewis Voight & Sons Company, party to these proceedings, and was produced by him for affiant's inspection as the copy of the petition which was part of the office files of papers in the said case, as the same came to the possession of said Waite from Harlan

Cleveland, now deceased, the original counsel therein, who filed the answer to said petition for said The Lewis Voight & Sons Company. 79

That said certified copy, so inspected by this affiant, contains as the allegation and the only allegation of the state where the said Continental Wall Paper Company was incorporated, that it was incorporated, organized and existing under the laws of the State of New York, and contains and shows no allegation that said Continental Wall Paper Company was incorporated under the laws of Ohio and New York, and does not contain the words "Ohio and" before the words "New York", in said allegation. 80

Affiant makes this affidavit as part of the papers and proceedings for petition for writ of certiorari for a diminution or correction of the record in the above entitled cause.

And further affiant saith not.

(Signed) JOSEPH WILBY.

Subscribed in my presence, and sworn to before me, this Sixteenth day of November, A. D. 1908.

JOHN J. TAYLOR,
Notary Public,
Hamilton County, Ohio.

(Notarial Seal.)

81

To Messrs. Orris P. Cobb, Morrison R. Waite, and Cobb, Howard & Bailey, Respondent's Solicitors & Counsel.

Service of the foregoing affidavit is hereby admitted.

Solicitors for Respondent.

Cincinnati, O., Nov. 16, 1908.

Supreme Court of the United States,

OCTOBER TERM, 1908.

Office Supreme Court, U. S.
FILED.
NOV 20 1908
JAMES H. McKENNEY
Clerk

No. 15.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

against

THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

Petitioner's Brief on Jurisdiction.

LOUIS MARSHALL,
JOSEPH WILBY,
Petitioner's Counsel.

B. H. TYRREL, PRINTER, 206-8 FULTON STREET, NEW YORK.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1908.

CONTINENTAL WALL PAPER COMPANY, Petitioner, *vs.* THE LEWIS VOIGHT & SONS COMPANY, Respondent.	No. 15.

Petitioner's Brief on Jurisdiction.

On November 9, 1908, an announcement was made by this Honorable Court, that briefs of counsel would be received on or before November 23, 1908, on the question of the jurisdiction of the Circuit Court herein, as affected or controlled by the allegations in the petition, that the plaintiff is a corporation duly created, organized and existing under the laws of Ohio and New York, and that the defendant is a corporation created, organized and existing under the laws of Ohio.

The petitioner having in fact been organized under the laws of New York, and of no other State, and the defendant having affirmatively alleged that fact in its answer, and no suggestion as to the lack of jurisdiction having been pre-

sented until the announcement just referred to was made, an examination of the original petition was at once instituted, and it was found that it did not contain the allegation that the petitioner was organized under the laws of the State of Ohio, and that by reason of a clerical error, the transcript interpolated into the copy of the petition not only the word "Ohio," which had been stricken out of the petition as it came from the typewriter, and before filing, but also the conjunctive "and," which did not even appear in the original typewritten petition.

The petitioner, therefore, in the interests of justice, has applied for a writ of certiorari for a diminution or correction of the record, and now submits the facts appertaining to the record itself, and additional suggestions based on the printed transcript which is now before the Court.

POINTS.

I.

If any doubt exists as to jurisdiction, based on the printed transcript now before this Court, then, in the interests of justice, a writ of certiorari for a diminution and correction of the record so as to conform with the facts, should be granted.

The indisputable facts are, that this action was commenced on February 24, 1900, in the United

States Circuit Court for the Southern District of Ohio, Western Division. (*Afft. fol. 26.*) Messrs. Kittredge & Wilby represented the petitioner as its local counsel. (*Afft. Fol. 44.*) Mr. Wilby of that firm personally drew and personally filed with the Clerk of that court the original petition. (*Afft. fol. 46.*) He has no doubt whatever but that the petition when so filed, in all respects as to its language and allegations, was the same as appears from the copy attached to his affidavit and which is certified by the clerk of that court (*fol. 46*) and has never been changed or corrected, or in anywise altered, by him or by his direction. (*Afft. fol. 47.*) He has absolutely no doubt that the word "Ohio" shown in the fourth line of the certified copy, had been stricken out of the original petition prior to the time of its filing, just as it appears today so stricken out in the original petition on file in the Circuit Court. (*Afft. fol. 47.*)

The certified copy of the original petition, as on file, shows (*fol. 50*) that the word "Ohio" as it appeared before the word "New York," was stricken out in ink, and that there was no conjunctive "and" between the words "Ohio" and "New York."

The certificate of the Clerk contains the following statement (*Afft. fol. 55*):

"I further certify that the word 'Ohio' is stricken out in the original in the same manner as appears in this copy."

Mr. Hays, who was in February, 1900, and for a long time thereafter, employed in the clerk's office, and under whose supervision all pleadings

were filed, describes the petition as on file, saying (*Afft. fol. 61*):

"and that in said original petition in said cause the word 'Ohio' at the end of the fourth line of said original petition as part of the allegation of the state of incorporation of the Continental Wall Paper Company, * * * had been stricken or scratched out with ink prior to the making of the transcript."

And he adds, that he knows and remembers these facts because it was part of his duty to, and he in fact did, attend to the counting of the words in the original petition just prior to the time that the transcript was made up, in order to estimate the cost of the transcript. (*Afft. fol. 62.*) He also shows, that in the transcript the words "Ohio and" were inserted through error and inadvertence of the copyist, as shown by the certified copy of the petition as it appears in the transcript, (*Afft. fols. 63, 64, 69*); and he distinctly testifies that the words "Ohio and" never appeared in the allegations of the original petition filed, but appeared for the first time in the copy of the petition which was part of the transcript filed in the United States Circuit Court of Appeals. (*Afft. fol. 65.*)

As corroborating this statement, the office-copy of the petition in the office of petitioner's counsel, shows that the word "Ohio" at the end of the fourth line, was stricken out in ink, and that the conjunctive "and" did not appear therein as originally typewritten between the words "Ohio" and "New York." (*Afft. fols. 27-29.*)

The affidavit of Mr. Wilby, of November 16, 1908, further corroborates our contention to the extent of a demonstration. He shows that a cer-

tified copy of the petition in the possession of Mr. Waite, respondent's counsel, and which he received from his lamented predecessor in the cause, Mr. Cleveland, contains the allegation, that the petition was incorporated under the laws of the State of New York, and does not contain the words "Ohio and" before the words "New York."

The petition as printed in the transcript, also affords intrinsic evidence of the fact that the words "Ohio and" did not appear in the petition as filed, because the allegation as to incorporation is immediately followed by the alegations, "and a citizen and resident of *said* State of New York." (*Rec. p. 2.*)

This is further shown by the fact, that each of the statements forming part of the exhibits show that the Continental Wall Paper Company was located at 1135 Broadway, New York (*Rec. pp. 3-37*), and this corroboration becomes a demonstration by the fact that the summons contains the following description of the parties (*Rec. p. 38*):

"You are hereby commanded to notify The Lewis Voight & Sons Company, *a corporation citizen of and resident in the State of Ohio,* if it be found in your District, that it has been sued by The Continental Wall Paper Company, a corporation Plaintiff, *citizen of and resident in the State of New York,*" &c.

If proof were lacking as to the omission of the words "Ohio and" from the petition as filed, it would be supplied not only by the various motions made on behalf of the defendant with regard to the pleadings, in none of which the question of jurisdiction was presented (*Rec. pp. 38-41*), but by the affirmative admission in the answer, that

the plaintiff was "a corporation created, organized and existing under the laws of the State of New York, and a citizen and resident of said State." (*Rec. p. 351.*) This is the more significant, from the fact that the certified copy of the petition, as filed, in the possession of defendant's counsel, did not contain the words "Ohio and", as is pointed out by Mr. Wilby's affidavit of November 16, 1908.

It would be a violent assumption, that the defendant's able counsel would have made this admission if the original petition had alleged that the plaintiff was a corporation organized under the laws of Ohio and New York.

As is shown in the affidavit (*fols. 34-36*), the answer and the exhibits therein referred to and thereto attached, all indicated that the plaintiff was organized under the laws of New York; and the amended answer contains the same admissions and allegations, which are also contained in the brief of the respondent in this cause (*Afft., fols. 37, 38*).

In this connection it is also interesting to note, that the petition was verified by the Secretary of the company in the State of New York, before a Notary Public of that State (*Rec., p. 3*).

There can, therefore, be no doubt as to the jurisdictional allegations as they appeared in the petition when filed, or as to the fact that the plaintiff was organized under the laws of the State of New York, and of no other State. Nor is there any doubt as to the fact, that this case has proceeded for nearly nine years without the slightest suggestion or intimation as to the existence of a question with regard to jurisdiction.

Hence it would seem that this Court has, and should exercise, the power to relieve the parties from the embarrassment resulting from the erroneous transcript of the petition.

Rule 14 of the Rules of this Court, was apparently designed to cover a case like this, and cases have frequently arisen in which the right to grant relief under similar circumstances was recognized.

Woodward v. *Brown, 13 Pet., 1.*
Hudgins v. *Kemp, 18 How., 534.*
United States v. *Gomez, 1 Wall., 702.*
The Rio Grande, 19 Wall., 188.

In *American Construction Co.* v. *Jacksonville Railway, 148 U. S., 380,* referring to the writ of certiorari, Mr. Justice Gray said:

"It was used by this Court as an auxiliary process only, to supply imperfections in the record of a case already before it; and not like a writ of error to review the judgment of an inferior Court."

It would be a reflection on judicial procedure, if a party could be deprived of his right to be heard in consequence of a clerical error, and that even though such error were demonstrated, relief could not be granted.

II.

Irrespective of the facts disclosed on this application, it is believed that the transcript as printed, justifies the Court in ignoring, at this stage of the litigation, the words "Ohio and," in order to retain the jurisdiction which the Courts below entertained, with the sanction of the defendant.

In *Gordon* v. *Third National Bank, 144 U. S., 97,* an action was brought in the Circuit Court of the United States in Alabama, the complaint described the plaintiff as a bank organized in accordance with the laws of the United States and as doing business in Tennessee, and the defendant as residing in the State of Alabama. The summons described the plaintiff as "a citizen of the State of Tennessee," and the defendant as "a citizen of the State of Alabama." The question of jurisdiction was raised for the first time in this Court, but was retained, Mr. Chief Justice Fuller saying:

"The question of jurisdiction is raised for the first time in this court, and as we are of opinion that the diverse citizenship of the parties appears affirmatively and with sufficient distinctness from the record, *of which the summons forms a part,* we must decline to reverse the judgment on this ground, although greater care should have been exercised by the plaintiff in the averments upon that subject."

It has already been shown, that, in this case, the summons correctly set forth the necessary diver-

sity of citizenship, in almost the very words of the summons in the case which has just been cited; and this allegation in the summons is borne out by the admissions in the original answer and in the amended answer, and in the allegations in both of them and in the exhibits forming a part thereof and attached thereto, that the plaintiff was a corporation organized under the laws of the State of New York.

In *Denny* v. *Pironi, 141 U. S., 124,* Mr. Justice Brown said:

"It has been repeatedly held that it was not necessary for the averment (of the citizenship of the parties) to appear in the pleadings, but that the statute was complied with if it appeared in any part of the record. Thus in *Railway Company* v. *Ramsay, 22 Wall., 322, 328,* which was a case removed from a state court, the averment of citizenship did not appear in the pleadings. * * * The court held that, while consent of the parties cannot give the courts of the United States jurisdiction, they may admit facts which show jurisdiction, and the courts may act judicially upon such admission, and that it would be presumed that the petition for removal stated facts sufficient to entitle the party to have the transfer made. Said the Chief Justice, speaking for the court: 'As both the court and the parties accepted the transfer, it cannot for a moment be doubted that the files did then contain conclusive evidence of the existence of the jurisdictional facts.' * * *

"While these cases settle the principle that it is not necessary that the essential facts shall be averred in the pleadings, they show that they must appear in such papers as properly constitute the record upon which judgment is entered, and not in averments which are improperly and surreptitiously introduced into the record for the purpose of healing a defect in this particular."

In *People's Telephone & Telegraph Co. v. East Tennessee Telephone Co., 103 Fed. Rep., 212,* Judge Severens, speaking for the Circuit Court of Appeals for the Sixth Circuit, said:

"Another ground of defense newly raised in this court is that the complainant wholly fails to show diverse citizenship of the parties, and in support of this contention it is urged that 'the allegation that complainant is a non-resident of Tennessee is not equivalent to the allegation that it is a citizen of another state,'—a proposition which might be admitted. And it is true that there is no direct averment in the bill that the complainant is a citizen of another state than Tennessee. But this is not indispensably necessary. If it appears by way of description in any part of the pleadings or process that the requisite diversity of citizenship exists, that is sufficient where the question is first raised on appeal. *Gordon v. Bank, 144 U. S., 97; Ward v. Manufacturing Co., 56 Fed. Rep., 437.*"

In *Howe v. Howe & Owen Ball Bearing Co., 154 Fed. Rep., 820,* Judge Sanborn, speaking for the Circuit Court of Appeals for the Eighth Circuit, said:

"The jurisdiction of the court below is challenged in the brief and argument, but the ruling of that court upon the question of jurisdiction is not assigned as error, and the questions regarding it now urged were probably never called to its attention. They are: Was there sufficient evidence that the value of the property in dispute was $2,000 exclusive of interest and costs? And was there sufficient evidence that the complainant Owen was a citizen and resident of a state other than Missouri, the state of the citizenship and residence of the defendant Howe? The jurisdiction of a federal court may not be renounced or denied

where the facts requisite to confer it appear either directly or by just inference from any part of the record. *Briges v. Sperry, 95 U. S., 401, 403; Gordon v. National Bank, 144 U. S., 97, 103; Myers v. Hettinger, 94 Fed. Rep., 370, 371; Ward v. Manufacturing Co., 56 Fed. Rep., 437, 439; Railway Co. v. Ramsey, 22 Wall., 322, 328; Express Co. v. Kountze, 8 Wall., 342; Jones v. Andrews, 10 Wall., 327, 331; Steamship Co. v. Tugman, 106 U. S., 118; Bondurant v. Watson, 103 U. S., 281.*

"The articles of incorporation of the Howe & Owen Ball Bearing Company, which are in the record, prove that it is a corporation organized in November, 1902, under the laws of the state of Maine, that James G. Owen was its president and one of its stockholders, and they recite that his residence was Evansville in the state of Indiana. From these facts the legal presumption arises that Owen was a resident and citizen either of the state of Maine, because he was a stockholder of a corporation of that state, and the presumption is that all who compose a corporation are citizens and residents of the state from which it derived its power (St. Louis & San Francisco Ry. Co. *v.* James, 161 U. S., 545, 554, and cases there cited), or of the state of Indiana, because he was a resident of that state, and the presumption is that a person is a citizen of the state of his residence, and in either event the citizenship of the parties to the suit was diverse. Facts sufficient to sustain the jurisdiction of the Circuit Court thus appear in the record."

The fact that the words "Ohio and" appear in the petition, and nowhere else in the record, would, under the circumstances, justify the court in treating them as surplusage, especially in view of the fact that they are immediately followed by the essential allegation (*Rec., p. 2*) that the plaintiff is "a citizen and resident of said State of New York," thus ignoring the words "Ohio and," and

indicating that they were not considered as forming part of the record.

III.

Even if the court should decline to permit the record to be corrected in conformity with the original petition as filed, and should disregard the intrinsic evidence of the record as evidence indicating the necessary diversity of citizenship to give jurisdiction, it is submitted that, even though the plaintiff had been incorporated under the laws of Ohio as well as under the laws of New York, on the facts indicated by the record the Federal Court would nevertheless have had jurisdiction.

While it is believed that under the circumstances of this case, this is a moot or academic proposition, we are justified in asserting, that it clearly appears from the record that the plaintiff was organized under the laws of New York in accordance with a contract between the incorporators providing for such incorporation, that the corporation was consistently described in all of the documents which constitute a part of the record, as organized under the laws of the State of New York, and that if it was ever or-

ganized under the laws of the State of Ohio, it could only have been for a subsidiary purpose. That being the case, for jurisdictional purposes the plaintiff should be considered as a citizen of the State of its original creation.

This seems to have been decided in *St. Louis & San Francisco Railway Co.* v. *James, 161 U. S., 545.* There, the defendant was organized and incorporated under the laws of Missouri. Thereafter, in compliance with the provisions of the laws of Arkansas, it filed a certified copy of its articles of incorporation with the Secretary of State of Arkansas, and operated its railroad through that State, the Arkansas statute providing, that in such case the corporation should become a corporation of Arkansas. The defendant in error, a citizen of Missouri, sued the defendant in the Circuit Court for the Western District of Arkansas. The question of jurisdiction having been certified, it was held that the presumption that a corporation is composed of citizens of the State which created it, accompanies it when it does business in another State, and that it may sue or be sued in the Federal courts in such other State as a citizen of the State of its original creation; and that in the case under consideration, for purposes of jurisdiction the corporation was to be deemed a citizen of Missouri, the State of its origin. Mr. Justice Shiras, referring to the various cases cited, said:

"To fully reconcile all the expressions used in these cases would be no easy task, but we think that the following propositions may be fairly deduced from them: There is an indisputable legal presumption that a state corporation, when sued or suing in a Circuit Court of the United States, is composed of citizens of the state which created

it, and hence such a corporation is itself deemed to come within that provision of the Constitution of the United States which confers jurisdiction upon the Federal courts in 'controversies between citizens of different States' * * *

"The presumption that a corporation is composed of citizens of the State which created it accompanies such corporation when it does business in another State, and it may sue or be sued in the Federal courts in such other State *as a citizen of the State of its original creation.*

"We are now asked to extend the doctrine of indisputable citizenship, so that if a corporation of one State, indisputably taken, for the purpose of Federal jurisdiction, to be composed of citizens of such State, is authorized by the law of another State to do business therein, and to be endowed, for local purposes, with all the powers and privileges of a domestic corporation, such adopted corporation shall be deemed to be composed of citizens of the second State, in such a sense as to confer jurisdiction on the Federal courts at the suit of a citizen of the State of its original creation.

"We are unwilling to sanction such an extension of a doctrine which, as heretofore established, went to the very verge of judicial power."

In *Louisville, New Albany & Chicago Railway Co. v. Louisville Trust Co., 174 U. S. 552,* it was held that the Circuit Court of the United States for the District of Kentucky has jurisdiction of a suit brought by a corporation originally created by the State of Indiana, against citizens of Kentucky and of Illinois, even if the plaintiff was afterwards and before the suit made a corporation of Kentucky also, and pending the suit became a corporation of both Indiana and Illinois by reason of consolidation with a corporation of Illinois; although it was also held that the court could not,

in such a suit, adjudicate upon the rights and liabilities, if any, of the plaintiff as a corporation of Kentucky, or as a corporation of Illinois.

In the present case, the statements of account attached to the petition show that the Continental Wall Paper Company is seeking to recover on bills rendered by it from 1135 Broadway, New York, and the contracts show that the goods were sold f. o. b. New York and Philadelphia.

See also

Southern Railway Co. v. Allison, 190 U. S. 333, 339, 341.

Calvert v. Southern Railway Co., 187 U. S. 636.

Richards v. Michigan Central R. R. Co., 186 U. S. 479.

IV.

It is respectfully submitted, that the relief prayed for should be granted, and that in order to prevent a miscarriage of justice, jurisdiction of this cause should be retained.

LOUIS MARSHALL,
JOSEPH WILBY,
Petitioner's Counsel.

Office Supreme Court, U. S.
FILED.
NOV 20 1908
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1908.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,
versus
THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

No. 15.

Response to the Petition for Writ of Certiorari for Diminution of the Record.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The respondent, The Lewis Voight & Sons Company, a corporation duly organized and existing under the laws of the state of Ohio, and a citizen of said state, in response to the petition for writ of certiorari for diminution of the record of the petitioner herein, admits that the facts as stated in the paragraphs of said petition numbered one to seven inclusive, are truly and correctly stated, and that the words "Ohio and" in the fourth line on the second page of the original record in this cause, appear therein as a result of the error, inadvertence and mistake of the copyist of the transcript in the Circuit Court, prepared for filing in the Circuit Court of Appeals for the Sixth Circuit.

WHEREFORE, respondent unites in the prayer of the petitioner in its petition last aforesaid.

THE LEWIS VOIGHT & SONS COMPANY
COBB, HOWARD & BAILEY and
MORISON R. WAITE,
Its Solicitors.

Supreme Court of the United States,

OCTOBER TERM, 1907.

No. 15

Office Supreme Court, U.S.
FILED.
APR 16 1908
JAMES H. McKENNEY
CLERK

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

against

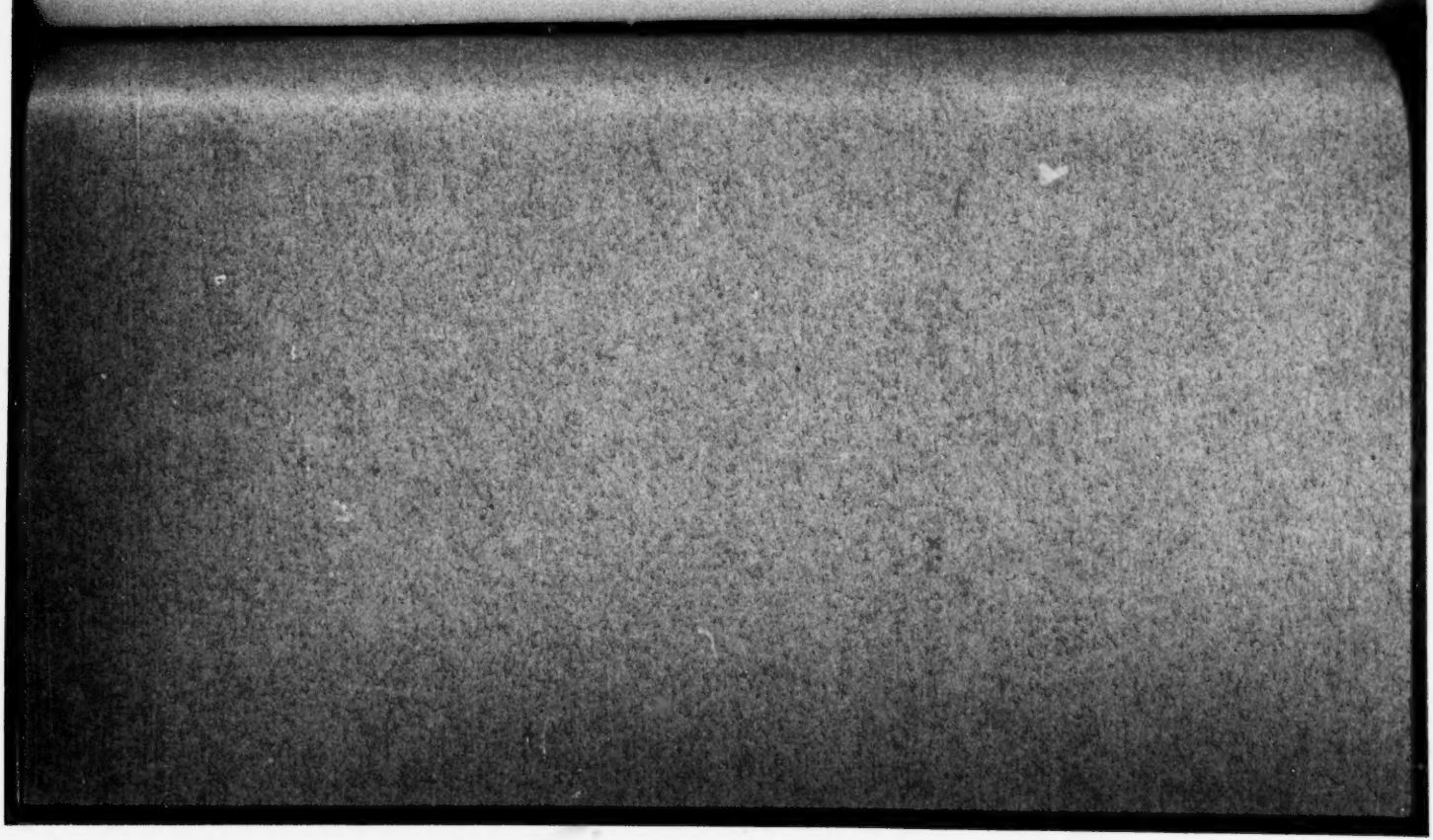
THE LEWIS VOIGHT & SONS COMPANY,
Respondent

On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

PETITIONER'S POINTS.

LOUIS MARSHALL,
JOSEPH WILBY,
Petitioner's Counsel.

B. H. TYRRELL, PRINTER, 206-9 FULTON STREET, NEW YORK.



Supreme Court of the United States.

OCTOBER TERM, 1907.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,
against
THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

No. 212.

ON CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SIXTH CIRCUIT.

Petitioners' Points.

The petitioner, Continental Wall Paper Company, is a corporation duly organized under the Laws of the State of New York, where, at the times referred to in the pleadings, it was engaged in selling wall paper, as the sales agent of various manufacturers, located in several states of the Union.

The defendant, a dealer in wall paper, at Cincinnati, of the class known as a jobber, purchased large quantities of its merchandise from the petitioner in 1898, for only a part of which it has paid.

The History of the Action.

Accordingly on February 24, 1900, the petitioner brought this action against the respondent in the United States Circuit Court for the Southern District of Ohio, Western Division, to recover the sum of Fifty-seven thousand seven hundred and sixty-two and 10/100 Dollars ($57,762.10), with interest thereon from July 29, 1899, the unpaid balance of the purchase price of the goods so sold and delivered by it. The petition is in the common law form of an action for goods sold and delivered (Rec., p. 2).

In due time the respondent interposed an amended answer, setting up a number of special defenses and counterclaims. The petitioner interposed demurrers to the second, third, fourth and fifth defenses and to the first and second counterclaims and cross-petitions embodied in the amended answer, and replied to the sixth defence and to the third counterclaim and cross-petition of the respondent. The demurrers were argued before his Honor Judge Thompson about February, 1902, and on May 27, 1905, a decision was rendered, by which all of the petitioner's demurrers were sustained, except that which was interposed to the third defence, which was adjudged to be sufficient, and since the logical effect of such decision was to defeat a recovery on the part of the petitioner, a judgment dismissing the complaint followed (Rec., pp. 439, 440).

The petitioner thereupon sued out a writ of error to the United States Circuit Court of Appeals for the Sixth Circuit, upon which argument was had, beginning on November 7, 1906, and

thereafter and on December 4, 1906, a decision was rendered by said Court affirming the judgment of the Circuit Court.

Subsequently on plaintiff's petition a writ of certiorari was issued out of this Court to review the judgments so rendered.

THE NATURE OF THE DEFENCE AS SUSTAINED.

The third defence set forth in the answer, which has been sustained, in substance alleges that a number of firms, corporations and individuals engaged in the business of manufacturing wall paper, and producing upwards of ninety-eight per cent of all the wall paper manufactured and sold in the States and Territories of the United States, organized the plaintiff as a corporation under the Laws of the State of New York, for the purpose of creating restrictions in trade and commerce, limiting the production of wall paper, increasing the price thereof, and preventing competition in the manufacture and sale of the article; that after having formed such corporation, contracts were entered into between the Continental Wall Paper Company, the petitioner, and the several manufacturers of wall paper, whereby the latter sold to the former all of their output on terms specified in the agreements which are referred to in the answer (Exhibit 1, Rec., pp. 406 to 419), and that pursuant to such agreements the plaintiff undertook to control the prices at which wall paper was to be sold, and entered into contracts with various jobbers doing business in the United States, whereby the latter agreed that they would not directly or indirectly sell or offer for sale any of the merchandise purchased from the plaintiff at

lower prices or on better or more favorable terms than those specified in the contracts between them.

It is alleged that the defendant was such a jobber, and that the merchandise for which the petitioner seeks to recover was sold to it as such jobber by the petitioner, under the terms of such contract.

(a) *The contract between Plaintiff and Defendant.*

The contract between the petitioner and the defendant which appears *Rec., pp. 419 to 432,* omitting the schedules of prices thereto annexed is as follows:

Exhibit 2.

An agreement made this ..... day of ..... in the year one thousand eight hundred and ninety-eight, between the Continental Wall Paper Company, a corporation organized under the laws of the State of New York (hereinafter called the Company), party of the first part and ..... of ..... (hereinafter called the Jobber) party of the second part.

In consideration of the sum of one dollar, paid by the jobber unto the company for granting of this agreement, the receipt whereof is hereby acknowledged, and other valuable considerations,

It is agreed between the parties hereto as follows:

First.—That the company will sell, subject to such credit limitation as it may impose, and the jobber will purchase the entire requirements of the jobber in his business of selling wall paper for the business year ending July 1st, 1899, to the amount of a gross value, without discounts, of.. ..... the jobber reserving to himself the right

to purchase such merchandise as he may need in excess of ..... from others.

The company is to deliver the goods without additional charge f.o.b. at New York or Philadelphia, or to equalize freights from the places at which it makes deliveries to either of said cities.

Second.—The jobber shall be allowed discounts at the rates shown in the accompanying schedule marked "A" which is hereby embodied in this agreement as a part thereof.

The terms of payment to be as follows: Four months from the date of invoice, with discount at the rate of 1 per cent. per month for anticipated payment; provided settlement be made within 30 days from date of shipment either by cash or note. Invoices for all goods shipped between October 15th and March 1st, to take the latter date.

Third.—Attached hereto marked "B" is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers and also a statement of discount allowed to such customers other than jobbers for quantity purchases, together with the terms of credit, and freight allowance to which such customers are entitled.

It is an essential condition of this agreement that the jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in schedule "B," the intent hereof being to assure the company against the use by the jobbers of this agreement to undersell the company.

The prompt performance by the jobber of the provisions of this agreement as to payment and otherwise is a condition precedent to exacting the continuous performance of said agreement by the company.

In witness whereof the company has caused this instrument to be executed, and the jobber has hereunto set his hand the day and year first above written.

(*b*) *Gravamen of the Defense.*

It is not pretended that the defendant was the manufacturer of wall paper; nor that it entered into any contract with the petitioner whereby the latter undertook to handle any product controlled by the defendant; nor that the defendant's dealings with the petitioner were in any other capacity than that of a customer.

Every allegation of the answer indicates that the gravamen of the defence sought to be interposed was, that the petitioner was a trust and that the defendant was its victim. As indicating that fact, the following analysis of the third defence is presented:

That defence alleges that the defendant has been for ten years last past, and was at the time stated in the petition, and is now, engaged in the business of buying, selling and dealing generally throughout the State of Ohio and elsewhere in wall paper of all kinds (*Rec., p. 387*); that the business of the defendant has consisted of what is generally known as that of a jobber or "wholesaler," that is to say, the defendant at the beginning of each season has bought from those engaged in the manufacture of wall paper merchandise in wholesale lots and has resold the same from time to time to retail dealers (*Rec., pp. 387, 388*).

It is then alleged that on July 1, 1898, the National Wall Paper Company was the owner of certain specified factories for the manufacture of wall paper (*Rec., p. 388*), and that other designated firms and corporations, *not including the defendant*, were engaged in the manufacture of wall paper and the sale of their product at various places designated (*Rec., pp. 388, 389*). It was then

alleged that these persons, firms and corporations who purchased and sold upwards of 98% of all the wall paper manufactured and sold in the several States and Territories of the United States,

"contriving and intending and conspiring with each other to form a combination and trust by which to limit the production of wall paper in the United States and also to enhance the price thereof to the jobbers, the wholesalers, the retailers and the consumers of wall paper * * * agreed with each other that, while said corporations and persons should retain the ownership of their several plants and business * * * the control of said several businesses, and all matters relating to and affecting the production of said several establishments and the prices and sale of wall paper manufactured thereby, should be placed under the control of a committee to be appointed by said several corporations and firms, * * * that said committee should adopt rules and regulations governing the manner of conducting the business of all such persons, firms and corporations * * * to fix and determine list prices, discounts, terms of sale, equalization of freight rates, and all other matters affecting the production and regulation of prices and the classification of the dealers in wall paper in the United States; and the prices at which the wall paper should be sold to and by such several classes and the division of the profits, thence arising among said corporations and firms, not in proportion to their production and sales, but in proportion to their capacity" (*Rec., p. 389*).

It is then alleged that contriving, intending and conspiring together, with intent to disguise the real agreement, and to defeat and evade the law and the provisions of the statutes of the several states, and of the United States, it was further agreed that, for the more effectual carrying out

of said agreement, a corporation should be ostensibly formed under the laws of the State of New York, to be called the Continental Wall Paper Company, being the plaintiff herein, with a capital stock of $200,000 (*Rec., p. 390*).

The terms of the agreement entered into between the various firms and corporations forming the Continental Wall Paper Company are then set forth (*Rec., pp. 390, 391*):

"For the purpose and with the intentions aforesaid, it was further agreed that said the Continental Wall Paper Company should, in some form so as to disguise the real nature of the transaction, compel all dealers in wall paper, whether jobbers or wholesalers, to sign an agreement obligating the jobbers or wholesalers to buy from no one but said members of said combination and trust, and at the prices fixed in Schedule B attached to said Exhibit 1, and likewise an agreement by such jobbers not to sell goods to dealers other than jobbers at lower prices or upon better or more favorable terms than those shown in the Schedule C attached to said Exhibit 1, under the penalty that if they refused so to do, no wall paper should be sold to such jobber by any of said corporations or firms, and that, thereby, such jobbers should be driven out of business and that the profits made by such prevention of competition and enhancement of price, should be divided among said corporations and firms nominally as dividends upon said stock, but in reality in proportion to their respective holdings as aforesaid. * * *" (*Rec., p. 391*).

It is then alleged that in pursuance of said agreement the plaintiff was nominally incorporated with the capital aforesaid, and the said contracts were signed by the National Wall Paper Company, and said persons and corporations, be-

ing, at once, subscription for stock by said so-called vendors, and the acceptance of such subscription by the said Continental Wall Paper Company, and by it, nominally, each so-called vendor sold unto the company, and the latter agreed to purchase the entire product of wall paper manufactured by each of said vendors for the period from July 20, 1898, to the first day of July, 1899; that said contract further fixed prices at which the merchandise should be nominally sold to the Company, and further nominally provided that the goods pretended to be acquired by the Company from the so-called vendor, should be sold by the Company for the account of the Company, and that the goods acquired which should be sold to wholesalers other than jobbers, should be sold by the vendor for the account of the Company (*Rec., pp. 400, 401*).

It is then alleged that the schedules attached to said agreement contained a list of prices for all commodities in the wall paper line, which were called "List" or "Road Prices," and that said contract provided that sales made to jobbers should be made at discounts from said List or Road prices fixed in the schedule marked "B" annexed to said Exhibit 1 (*Rec., pp. 391, 392*).

The various terms of the contract between the so-called vendors and the company are then set forth (*Rec., pp. 392 to 394*). The answer then alleges (*Rec., p. 394*):

"It was further a part of said agreement, though not reduced to writing, save as is set forth in said exhibit, that all jobbers and other wholesalers of wall paper should be forced to sign an agreement binding themselves to purchase their entire stock of wall paper nominally either from

plaintiff or from said corporations or firms at prices fixed in said Exhibit 1, and that they should only sell at prices fixed in the Schedules attached to said Exhibit 1, under the penalty, which the combination of all of said corporations and firms enabled them to enforce, that such jobbers or wholesalers, in case of refusal to accede to the terms so imposed, or in case of violation thereof, should be unable to buy wall paper, should be driven out of business, and should sacrifice the good will and capital therein invested."

On page 395 it is alleged:

"In the further carrying out of said scheme to stifle competition, etc., * * * it was further agreed between the members of said combination and trust that the so-called directors of plaintiff, being really a committee appointed as aforesaid by the said members of said trust or combination, should arbitrarily classify the wholesale dealers of wall paper in the United States and territories thereof, into two classes, namely, jobbers and road or quantity buyers; that they should further arbitrarily classify the jobbers into 'First Class' and 'Second Class' and 'Third Class' jobbers; that they should further arbitrarily classify the other wholesalers into 'Road' or 'Quantity Buyers,' and 'Special Buyers;' that being thus classified they should all be compelled to sign written agreements, nominally with said company, really with said members of said combination or trust, obligating them to buy their entire stock of merchandise from said company. A copy of said agreement so to be signed by said jobbers is attached hereto, marked Exhibit 2, and made a part hereof."

On page 395 it is further alleged:

"To conceal the fact that it was an agreement to purchase from no one but said company, and

the members of said combination and trust, the amount of purchases made by the buyer, in the previous year, from all the members of said combination or trust, being the entire amount of purchases made by such buyer during the preceding year was ascertained, and an amount at least double thereof, * * * was inserted in said blank as the amount to be purchased by such buyer from the Company. By said agreement the prices to be paid by the jobber were fixed according to the class in which he was arbitrarily placed at prices enumerated in Schedule B attached to said Exhibit 1 and the prices at which alone said jobber could sell, was fixed as shown by Schedule C attached to said Exhibit 1."

On page 396 it is alleged:

"The members of said combination and trust, and said plaintiff, further to carry out said agreement, compelled all other wholesale and quantity buyers to sign agreements in the form attached to this answer, marked Exhibit 3. * * * In further carrying out said combination and with said purpose and intent, agreements were made by plaintiff and the members of said combination and trust and persons natural and artificial, in the Dominion of Canada, by which each agreed not to compete with the other, or cut prices, the Americans in Canada, the Canadians in the United States."

It is then alleged on page 396:

"On, before and after said first day of July, 1898, this defendant had a large and profitable business of long standing, possessing a valuable good-will, and in which they had a large capital invested, being what is generally called the business of a jobber or wholesaler of wall paper in the State of Ohio and throughout the States and territories of the United States. The defendant and

all other persons engaged in the wholesale wall paper business at the beginning of each season, which commenced in September and closed the first of July, following, according to the custom of the trade, bought from the various persons engaged in the manufacture and sale of wall paper in the United States, being the persons, members of said combination and monopoly, their stock of wall paper. * * * At said time said members of said combination and trust having, by the agreements and acts aforesaid, obtained the control of the wall paper trade throughout the United States, at once greatly advanced the price of said wall paper and threatened defendant that unless it signed said agreement, Exhibit 2, no wall paper would be sold to it; that said combination would make it impossible for it to buy wall paper, or to continue its business, and compel it to sacrifice the good will owned by it as aforesaid, and the capital invested by it in said business."

The answer then continues, page 397:

"Said *combination or trust* then and from that time thereafter, until the first day of July, 1900, had the power, by means of said *combination and said agreements*, and the will, to carry out its said threats, and deprive these defendants or any person, firm or corporation engaged in the business of selling wall paper in the United States of the power to obtain wall paper for its or their trade, and the will and the power to drive out of business any person, firm or corporation engaged in the business of selling wall paper, deprive them of their good will, and compel them to sacrifice the capital invested in the business. In like manner, by the same means, all other jobbers and wholesalers of wall paper in the United States, and all persons engaged in commerce in the wall paper trade between the several States of the Union and foreign countries, were compelled to and did sign the agreements attached to this answer as Exhibits 2 and 3.

"The immediate, intended and direct effect of the said combination and agreements was the stifling of competition between said manufacturers and vendors of wall paper, and between the jobbers and wholesalers thereof, and to unduly enhance the price of wall paper, making it one-half more than the price which it would be had the same been left to free and unrestricted competition; to compel said jobbers and wholesalers to pay such unduly enhanced and unreasonable price to the plaintiff and to members of said combination, and to exact from others an unduly enhanced price."

"After the making of said agreements, as before, the members of said *combination* solicited and received orders from this defendant and all other wholesalers filled their orders; charged the prices fixed in said schedules attached to said "Exhibit 1" and directed that payment for said merchandise should be made by the jobbers to said *plaintiff combination* for said several members of said *combination* and trust, to be divided in the manner aforesaid. Said *combination contrived,* intended and did prevent free and unrestricted competition between the producers and between the jobbers and wholesalers of wall paper throughout the United States."

On page 397 it is further alleged:

"Defendant avers that said plaintiff, and the members of said combination as aforesaid, combined capital and skill for each and all of the following purposes, to wit. * * *"

Then follows an enumeration of the alleged unlawful purposes.

To which is added the conclusion, page 398:

"Said contracts and agreements were each and all combinations and conspiracies in restraint of

trade and commerce between the said several states and with foreign nations * * * and by said contracts, and the acts done by the members thereof and by said plaintiff under and in pursuance thereof, said plaintiff and the said members of said combination or trust did monopolize and attempt to monopolize the trade and commerce in wall paper among the several states and with foreign nations."

On page 399 it is alleged:

"These defendants aver that the prices charged in said Exhibit attached to said amended petition, are the prices fixed and determined in pursuance of and by the combination or trust agreement, as above set forth, and are unreasonable, unjust and excessive."

The third defence concludes with the allegation:

"Each and all of the provisions of said contract and agreement between said members of said combination and each other; between said so-called vendors and said plaintiff; between said members of said combination and said plaintiff, and the so-called jobbers; between the members of said combination and trust and said plaintiff and the so-called 'Road' or 'Quantity Buyers,' are each and all contrary to the provisions of the statutes, etc." (*Rec., p. 399*).

THE SUBSTANCE OF THE DEFENCE.

We have thus with great detail sought to analyze the answer. Stripping it of all verbiage and of its epithetal allegations, and of the conclusions drawn and characterizations indulged in, it amounts simply to this:

First.—Various manufacturers of wall paper, among whom the defendant is *not* included because it was not a manufacturer but a jobber, combined together for the purpose of forming the Continental Wall Paper Company and of controlling the production and sale of wall paper thereby.

Second.—For the purpose of carrying out their plan they entered into agreements with each other regulating the manner in which their product was to be handled, the prices and terms on which such product was to be sold, the persons, firms and corporations to whom wall paper would be sold, and the conditions of such sale.

Third.—That the persons thus organizing the Continental Wall Paper Company intended to violate various statutes, to monopolize the manufacture of wall paper, to enhance the prices thereof, and to do other unlawful acts.

Fourth.—That the defendant, who was a jobber and wholesaler, to whom the combination expected to sell wall paper, was compelled by the combination to purchase the wall paper which it required upon the terms fixed and established by the combination, and was forced and compelled to execute an agreement specifying the terms on which such purchases were to be made and the conditions on which the goods so purchased were to be dealt in.

The courts below have held that these elements have stamped the contract between the plaintiff and the defendant with illegality to the extent that the latter cannot be required to pay for the

merchandise sold and delivered to it by the plaintiff.

ASSIGNMENTS OF ERROR.

On the rendition of judgment in the Circuit Court against the petitioner it sued out a writ of error and assigned error as follows (*Rec., p. 441*).

"1. The said Circuit Court of the United States for the Southern District of Ohio, Western Division, erred in finding that the demurrer of this plaintiff to and as to the third defense in the amended answer and cross-petition of said defendant was not well taken.

2. Said Court erred in overruling the demurrer of this plaintiff to and as to the third defense in the amended answer and cross-petition of said defendant.

3. Said Court erred in considering and adjudging that the petition of this plaintiff and the amendment to said petition be dismissed.

4. Said Court erred in considering and adjudging that upon the allegations of the third defense of the amended answer and cross-petition of said defendant the said defendant was and is entitled to judgment dismissing the petition and amendment to petition herein.

5. Said Court erred in dismissing the petition and amendment to petition of the plaintiff herein.

6. Said Court erred in adjudging that said defendant recover its cost of the plaintiff."

Questions Involved.

These assignments present for consideration propositions of wide-reaching importance, including the following, which will now be discussed:

(1) The case directly calls for a definition by this Court of the scope and effect of its decision in *Connolly* v. *Union Sewer Pipe Company, 184, U. S., 540,* which the petitioner claims to be decisive of this case, but which it is believed the courts below have erroneously sought to limit, and for all practical purposes, to overrule.

(2) It involves the question, as to whether the vendees of a so-called trust can, for the purpose of defeating a recovery by the alleged trust, for goods sold and delivered, treat themselves as members of the trust.

(3) It also involves the question, as to whether a covenant by the purchaser of merchandise, that he will not sell the goods purchased on terms better, or more favorable, than those specified in the contract, of purchase is in restraint of trade.

(*a*) Incidentally the question will arise, whether such a covenant, if in restraint of trade, is unreasonable.

(*b*) This in turn brings up the question, as to whether or not this Court has finally and definitely decided, that the Anti-Trust Act invalidates all contracts, reasonable or unreasonable, even though merely incidental, which may in a sense be regarded as in restraint of interstate trade.

(4) An equally important proposition arises, should it be assumed that the so-called restrictive

clause was illegal, whether the petitioner can nevertheless recover for the goods sold and delivered to defendant, in view of the fact that it did not seek in this action, to enforce the illegal covenant, but merely sought to recover for merchandise actually received and kept by the defendant, under the petitioner's executed contract, to sell which was separable from the so-called illegal covenant.

POINTS.

I.

Assuming, but not conceding, that the organization of the plaintiff was for the purpose of restraining competition, and enhancing prices, the defendants have no defence, under common law considerations, to the action brought against them to recover for goods sold and delivered.

The action is the ordinary common law action to recover for goods sold. The course of procedure on the trial of such an action would be to prove the sale and delivery of the goods. It would be unnecessary for the plaintiff to prove any of the matters set forth in the answer, or to rely upon any of the contracts therein pleaded.

The defendant, however, claims that the plaintiff cannot recover, because the various corporations, firms and individuals who became

stockholders in the Continental Wall Paper Company, and who organized that corporation, did so in order to accomplish a design to restrain trade by the prevention of competition, and otherwise. In other words, it is contended that although the State of New York, under whose laws the corporation was organized, did not see fit to proceed against the corporation for its dissolution, although the Attorney General of the United States did not see fit to proceed against the plaintiff under the act of Congress aimed at unlawful combinations in restraint of trade, and although no public authorities in any other State of the Union, in which this corporation has done business undertook to interfere with its operations, the defendant could with impunity, obtain on credit, the property of the plaintiff, under an express or implied promise to pay for it, and when called upon to pay, meet the demand with the statement, that the plaintiff is an outlaw, and because its origin and purposes were unlawful without redress.

The same reasoning would deprive the plaintiff of remedy, if the defendants had entered its warehouses and had converted its merchandise; or if they had feloniously and burglariously taken the plaintiff's property; or if they had willfully destroyed or damaged it, or had defrauded the plaintiff out of it. In each instance the defendants, if pursued in the Courts, either on the civil or criminal side, might have said, as they now do, that the plaintiff was a violator of the law, that its inception was criminal, and because the sovereign might have stricken it with death, for the unlawfulness of the conception, the defendants might with equal right have confiscated its property.

Will it not be said at once that the defendants would nevertheless be liable either civilly or criminally, or both, for the wrongful acts supposed, to the same extent as though the wrongs or crimes had been perpetrated upon the property of one not born in lawful wedlock, or of one who as a malefactor had subjected himself to criminal prosecution, or of one who on account of his crimes had actually been convicted and sentenced to imprisonment.

To apply the epigram of Mr. Justice Holmes in *National Bank & Loan Co.* vs. *Petrie, 189 U. S., 425; "But a person does not become an outlaw and lose all rights by doing an illegal act."*

The discussion of this subject as an original proposition would be most interesting, but it has become unnecessary in view of the decision of this Court in *Connolly* v. *Union Sewer Pipe Company* (*184 U. S., 540*).

There, the Union Sewer Pipe Company, a corporation organized under the laws of Ohio, and doing business in Illinois, sued Connolly to recover the purchase price of pipe purchased by him at an agreed price. The defendant set forth various special defences and pleaded a number of set-offs, both under the anti-trust act of Congress and the Illinois statute of July 1, 1893, against trusts, claiming that the plaintiff was "a trust or combi-"nation of the capital, skill and acts of divers per-"sons and corporations carrying on a commer-"cial business in the States of Ohio and Illinois "and between said States and elsewhere in the "United States of America, and organized for the "express purpose of unlawfully and contrary to "the common law creating and carrying out re-"strictions in trade, to wit, in the trade of buying,

"selling and otherwise dealing in certain arti-
"cles of merchandise, to wit, sewer and drainage
"pipes, and also for the express purpose of un-
"lawfully and contrary to the common law limit-
"ing the production of said articles of merchan-
"dise and increasing the market price thereof;
"and also for the express purpose of unlawfully
"and contrary to the common law preventing
"competition in the manufacture, making, trans-
"portation, sale or purchase of said articles of
"commerce; also for the express purpose of un-
"lawfully and contrary to the common law fixing
"standards or figures whereby the prices of said
"articles of merchandise intended for sale, use
"and consumption in this State should be con-
"trolled and established; and also for the express
"purpose of unlawfully and contrary to the com-
"mon law being a pretended agency whereby the
"sale of said articles of commerce should and
"might be covered up and made to appear to be
"for the original vendors thereof, and so as to en-
"able the original vendors or manufacturers
"thereof to control the wholesale and retail price
"of such articles of commerce after the title there-
"to had passed from such vendors or manufac-
"turers; and for the further express purpose of
"unlawfully and contrary to the common law
"making and entering into and carrying out a
"certain contract or certain contracts by which
"the several persons or corporations forming the
"plaintiff, or being the pretended stockholders
"thereof, to wit, have bound themselves not to
"sell, dispose of or transport said articles of com-
"merce below certain common standard figures
"or card or list prices in excess of the true mar-
"ket values thereof, and by which they have

"agreed to keep the prices of said articles of "commerce at certain fixed or graduated figures, "and by which they have established certain set- "tled prices of said articles of commerce between "themselves and others, so as to preclude a free "and unrestricted competition among themselves "and others in the sale and transportation of "said articles of commerce, and by which they "have agreed to pool, combine and unite any in- "terests they may have in connection with the "sale and transportation of said articles of com- "merce so that the prices thereof may effect ad- "vantageously to themselves; that all of the "claims of the plaintiff against the defendant in "this action arise wholly out of, and are in re- "spect of, sales of said articles of merchandise "made between the 1st day of January, A. D. "1893, and the 1st day of March, 1896, to this "defendant by the plaintiff in the ordinary "course of its business as such a trust or com- "bination acting as aforesaid, and that this action "is brought to recover the alleged price thereof "and for no other purpose."

It will be seen that the defence interposed in that case, is precisely the same, as that set forth in the answer to which the plaintiff here has demurred, the pleading in that case being more compact and artistic than that in the present case, but in all respects setting forth identically the same defense.

These defenses were overruled by the lower Court, and on writ of error, the claim was seriously made, that because the Union Sewer Pipe Company was a trust, formed for the purposes stated, Connolly was not bound to pay for the goods, which he had purchased from it.

This Court, however, affirmed the lower Court in an elaborate opinion, from which Justice McKenna alone dissented, his dissent being based not upon the theory that the facts pleaded constituted a defence at common law, but solely on the ground that under the anti-trust act of Illinois, which expressly provided that a trust should not be permitted to recover upon any contract made by it for the sale of goods, a defence was created.

Mr. Justice Harlan, considering first the claim that the plaintiff could not recover at common law because it was a combination in illegal restraint of trade, said:

"This defense cannot be maintained. Assuming, as defendants contend, that the alleged combination was illegal if tested by the principles of the common law, still it would not follow that they could, at common law, refuse to pay for pipe bought by them under special contracts with the plaintiff. The illegality of such combination did not prevent the plaintiff corporation from selling pipe that it obtained from its constituent companies or either of them. It could pass a title by a sale to anyone desiring to buy, and the buyer could not justify a refusal to pay for what he bought and received by proving that the seller had previously, in the prosecution of its business, entered into an illegal combination with others in reference generally to the sale of Akron pipe."

The case of *Strait* v. *National Harrow Co.*, (*51 Fed. Rep., 819*) was then cited with approval. That was a suit in which the plaintiffs sought a permanent injunction restraining the defendant from instituting or prosecuting any action against the plaintiffs for the infringement of letters patent owned by the defendant covering certain improvements in spring-tooth harrows, or

from instituting or prosecuting any such suits against any person using the spring-tooth harrows manufactured by the plaintiffs. The Court there said:

"In substance, the complaint shows that the defendant has entered into a combination with various other manufacturers of spring-tooth harrows for the purpose of acquiring a monopoly in this country in the manufacture and sale of the same, and, as an incident thereto, has acquired all the rights of the other manufacturers for the exclusive sale and manufacture of such harrows under patents, or interest in patents, owned by them respectively. Such a combination may be an odious and wicked one, but the proposition that the plaintiffs, while infringing the rights vested in the defendant under letters patent of the United States, is entitled to stop the defendant from bringing or prosecuting any suit therefor because the defendant is an obnoxious corporation, and is seeking to perpetuate the monopoly which is conferred upon it by its title to the letters patent, is a novel one and entirely unwarranted. The party having such a patent has a right to bring suit on it, not only against a manufacturer who infringes, but against dealers and users of the patented article, if he believes the patent is being infringed; and the motive which prompts him to sue is not open to judicial inquiry, because, having a legal right to sue, it is immaterial whether his motives are good or bad, and he is not required to give his reasons for the attempt to assert his legal rights. The exercise of the legal right cannot be affected by the motive which controls it."

To the same effect are the following cases which were not cited in the opinion of Mr. Justice Harlan:

Edison Electric Light Co. v. *Sawyer-Man Electric Co., 53 Fed. Rep., 598.*

American Soda Fountain Co. v. *Green, 69 Fed. Rep., 333.*

Brown Saddle Co. v. *Troxel, 98 Fed. Rep., 620.*

National Folding Box and Paper Co. v. *Robertson, 99 Fed. Rep., 985.*

Otis Elevator Co. v. *Geiger, 107 Fed. Rep., 131.*

The case of *Brown Saddle Co.* v. *Troxel* (*supra*), arose in this Circuit on exceptions to answers filed by the defendants. In the course of his opinion Judge Taft said:

"Secondly, the averment that the complainant is part of a combination or trust is irrelevant and impertinent, for the reason that it is no ground for denying relief for continued trespasses by a third person upon the property of the complainant. The fact that a corporation is part of an illegal combination or trust cannot justify the spoliation of the property which belongs to it by third persons. It is merely seeking by its bill to preserve its rights in its own property. What it may do with that property, or is doing with that property, cannot deprive it of its right to invoke the protection of the court against trespass and infringement."

The opinion of Mr. Justice Harlan then cited the case of *National Distilling Co.* v. *Cream City Importing Co.* (86 Wis., 352). That was an action to recover the price of goods sold and delivered, one of the defenses being that the plaintiff was a

member of an illegal trust or combination to interfere with the freedom of trade and commerce. The following quotation from the opinion rendered by the Supreme Court of Wisconsin was adopted by Mr. Justice Harlan:

"Conceding, for the purposes of this case, that the trust or combination in question may be illegal, and its members may be restrained from carrying out the purposes for which it was created by a court of equity in a suit on behalf of the public, or may be subject to indictment and punishment, there is, nevertheless, no allegation showing or tending to show that the contract of sale between the plaintiff and defendant was tainted with any illegality, or was contrary to public policy. The argument, if any the case admits of, is that, as the plaintiff was a member of the so-called 'trust' or 'combination,' the defendant might voluntarily purchase the goods in question of it at an agreed price, and convert them to its own use, and be justified in a court of justice in its refusal to pay the plaintiff for them, because of the connection of the vendor with such trust or combination. The plaintiff's cause of action is in no legal sense dependent upon or affected by, the alleged illegality, of the trust or combination, because the illegality if any, is entirely collateral to the transaction in question, and the court is not called upon in this action to enforce any contract tainted with illegality, or contrary to public policy. The mere fact that the plaintiff is a member of a trust or combination, created with the intent and purposes set forth in the answer, will not disable or prevent it in law from selling goods within or affected by the provisions of such trust or combination, and recovering their price or value. It does not appear that it had stipulated to refrain from such transactions. A contrary doctrine would lead to most startling and dangerous consequences."

Mr. Justice Harlan further cited *Dennehy* v. *McNutta* (86 Fed. Rep. 825), and might have added *Empire Distilling Co.* v. *McNulta* (77 Fed. Rep. 700), and *Olmstead* v. *Distilling and Cattle Feeding Co.* (73 Fed. Rep. 44), all of which are to the effect that one purchasing liquors from an illegal combination of distillers which controls the market and price, though impelled thereto by business needs and policy, enters into the contract voluntarily, and cannot retain the goods and recover the price paid, or any part of it, either on the ground that the combination was unlawful or the price excessive.

After considering this line of cases Mr. Justice Harlan concluded:

"This is not an action to enforce or which involves the enforcement of the alleged arrangement or combination between the plaintiff corporation and other corporations, firms and companies in relation to the sale of Akron pipe. As already suggested, the plaintiff, even if part of a combination illegal at common law, was not for that reason forbidden to sell property it acquired or held for sale. The purchases by the defendants had no necessary or direct connection with the alleged illegal combination; *for the contracts between the defendants and the plaintiff could have been proved without any reference to the arrangement whereby the latter became an illegal combination.* If, according to the principles of the common law, the Union Sewer Pipe Company could not have sold or passed title to any pipe it received and held for sale, because of an illegal arrangement previously made with other corporations, firms or companies, a different question would be presented. But we are aware of no decision to the effect that a sale similar to that made by the present plaintiff to the defendants respectively would

in itself be illegal or void under the principles of the common law. The contracts between the plaintiff and the respective defendants were, in every sense, collateral to the alleged agreement between the plaintiff and other corporations, firms or associations whereby an illegal combination was formed for the sale of sewer pipe.

"We are of opinion that the first special defense, based alone upon the principles of the common law, was properly overruled."

This decision, which on account of its importance, we have cited at great length, is but the latest application of the principle laid down in *Armstrong* v. *Toler* (11 *Wh.*, 258, 268), and numerous other cases which have proceeded upon the same principle, that a new contract, founded upon a new consideration, although in relation to a subject-matter respecting which unlawful transactions had occurred, is not itself unlawful. In that case the Court said:

"The man who imports goods for another by means of a violation of the laws of his country, is disqualified from founding any action upon such illegal transaction for the value or freight of the goods. * * * But after the act is accomplished no new contract ought to be affected by it; it ought not to vitiate the contract of the retail merchant who buys these goods from the importer."

On this principle it has been held, that an action may be maintained to recover upon an insurance policy upon a vessel sailing under an illegal register:

Ocean Ins. Co. v. Polleys, 13 *Peters,* 164,

that a bank paying checks at the order of another bank, could recover, although the plaintiff knew the money was used to pay gambling losses;

Armstrong v. American Exchange Bank, 133 *U. S.,* 467,

that a note given to raise money to pay off a prior note, given to obtain means to prosecute an illegal business, is valid;

Buchanan v. Drovers' National Bank, 55 *Fed.,* 226,

that an assignment of the right to collect money, advanced for gambling purposes, is a sufficient consideration to support a note;

Morris v. Norton, 75 *Fed. Rep.,* 926,

that the proprietor of a lottery, can recover from his agent, money paid upon a prize ticket, fraudulently sold after the drawing;

Phalen v. Clark, 19 *Conn.,* 432;

that proof that a plaintiff is a member of a combination, to raise the price of services, is not a bar to the recovery therefor;

The Charles E. Wisewall, 86 *Fed. Rep.,* 674;

that the fact that a house is let to a lewd person for purposes of prostitution, does not avoid a policy of insurance issued thereon, in favor of the owner;

Phenix Ins. Co. v. *Clay,* 101 *Ga.,* 332;

that a recovery upon insurance, may be had for articles, owned and used in violation of a statute;

Erb v. *Insurance Co.,* 98 *Iowa,* 611,

that liquors kept illegally for sale may be lawfully insured;

Niagara Ins. Co. v. *DeGraff*, 12 *Mich.*, 136,

that there may be a recovery against a banking company, purchasing bonds to be used in illegal transactions, although the vendor knew of the unlawful design;

Tracy v. *Talmage*, 14 *N. Y.*, 175,

that a foreign bank, loaning money upon negotiable certificates of deposit, may recover for the loan, although the issuance of such certificates is prohibited by statute;

Curtis v. *Leavitt*, 15 *N. Y.*, 245,

that a traveling merchant selling goods, without a license, may maintain an action for their price;

Mandelbaum v. *Greyovich*, 17 *Nevada*, 95,

that an action will lie for the proceeds of a sale of Confederate bonds;

Planters' Bank v. *Union Bank*, 16 *Wall.*, 500.

In *Yarborough's Admv.* v. *Avant* (66 *Ala.*, 526) it was held that although an illegal contract will not be enforced, yet, when the plaintiff's rights can be established and enforced without the aid of the illegal transaction its illegality does not affect his right to recover. A sale and conveyance of lands which are adversely held by a third person, is void as against him, or as against others whose rights may be prejudiced; but as between the parties themselves, and others succeeding to their rights, it is valid and operative.

Chief Justice Brickell said:

"The test by which to ascertain whether a contract, assailed as illegal, is capable of enforcement, is whether the plaintiff requires the aid of the illegal transaction to support his case. When his rights can be established without the aid of the illegal transaction, it does not affect them."

In *Ware* v. *Curry* (67 *Ala.*, 274) it was held:

"When the plaintiff requires the aid of an illegal transaction to support his contract, which is impeached as illegal, it is incapable of enforcement, but if he have rights originating in a transaction not offensive to law, and a right of recovery independent of an illegal transaction, although he may have participated in it, such transaction cannot be employed to defeat his suit.

"A vendor of lands who retained the legal title, but who afterwards voluntarily executed a deed to his vendee, to enable the latter to consummate a contract for the manufacture of iron for the Confederate States, during the war, has a right, springing out of the original contract of sale, to enforce his lien on the lands for the purchase money."

In *Martin* v. *Hodge* (47 *Ark.*, 378) it was held:

"No court will aid a man whose cause of action is founded upon an illegal or immoral act. Whenever the action appears to arise *ex turpi causa*, or from the transgression of the law, the courts refuse their assistance, not for the sake of the defendant, but because they will not aid such a plaintiff.

"The test to determine whether an action arises *ex turpi causa* is the plaintiff's ability to establish his case without any aid from an illegal transaction. If his claim or right to recover depends on a transaction which is *malum in se*, or prohibited

by law, and which he must prove in order to make out his case, he cannot recover."

In *National Distilling Co.* v. *Cream City Importing Co.* (*supra*) it appeared that the plaintiffs had formed a trust, for the purpose of acquiring a monopoly of the sale of alcohol and spirits, and the exclusive right to regulate and dictate the quantity manufactured, and the price thereof, and to render it impossible for dealers or consumers to purchase any such goods except from or through such combination; that it was impossible for defendant to buy such goods at their real market price, by reason of such combination, but was compelled to pay a greater price therefor, and for the purpose of recovering back such over-payments on its purchases, in the form of rebates, it was obliged to enter into an agreement to purchase all such goods used in its business for the period of six months succeeding the date of such purchases, from said trust or members thereof, and by so doing it would then receive the amount of such overcharges.

Judge Pinney said, after quoting the language which is referred to in the *Connolly case*:

"The defendant is not a party to any illegal contract, and the case is therefore not within the rule of Wheeler *v.* Russel, 17 Mass., 281, and many similar cases, to the effect that 'no action will lie upon a contract made in violation of a statute or a principle of the common law'; for the right of the plaintiff to make the sale in question, or of the defendant to buy, was in no way connected with or dependent upon the alleged trust or combination, although the plaintiff was a member of it. These views are sustained and illustrated by the cases of *Brooks* v. *Martin*, 2 *Wall.*, 70, *and Sharp* v. *Taylor*, 2 *Phil. Ch.*, 801; and many other cases might be

cited to the same effect. The provision for a rebate of a part of the purchase price to purchasers who would conduct their business in the manner stated in the answer was an inducement to them to continue their business relations with the plaintiff. It does not appear that there was any contract obliging the defendant to that course. A party may legally purchase the trade and business of another for the purpose of preventing competition, and the restraint of trade caused thereby is not, we think, unreasonable. And it would seem that an agreement between a number of dealers and manufacturers to raise prices, unless they practically control the entire commodity, and this is not claimed of the trust in question, cannot operate as a restraint upon trade, nor would it injuriously affect the public. * * *"

In *Minnesota Lumber Co.* v. *Whitebreast Coal Co.* (56 *Ill. App.*, 248), it was held that although there may be some illegal features connected with a transaction involved in a suit, yet the plaintiff may recover if his cause of action is otherwise legitimate, and he can make out his case without calling to his aid the illegal agreement.

In the case cited a contract was made for the sale and delivery of coal, containing a privilege of ordering any quantity of coal not in excess of 12,000 tons. This clause was considered to be an option to sell or buy at a future time, violative of the Illinois statute. Nevertheless it was held that there could be a recovery for coal actually delivered, the Court saying:

"Appellee did not call to its aid the illegal contract to make out its case. It was not necessary to do so. It was only necessary to show that the coal was ordered and delivered and what was the reasonable value of it. The claim which forms the basis of the suit is perfectly legitimate. The sale

and delivery of coal is not illegal. It is only option contracts to buy or sell coal that are prohibited by statute. Although there may be some illegal feature indirectly connected with a transaction involved in a suit, yet the plaintiff may recover if his cause of action is otherwise legitimate, and he can make out his case without calling to his aid the illegal agreement. The test of whether the demand can be enforced at law is whether the plaintiff requires the aid of the illegal contract to establish his case."

See,

Congress Co. v. Knowlton, 103 *U. S.*, 49.
Armstrong v. American Ex. Bank, 133 *U. S.*, 434.
Welch v. Wasson, 6 *Gray*, 506.

See also *Levin vs. Chicago Gaslight & Coke Co.*, 64 *Ill. App.*, 393, *and Ingraham vs. National Salt Co.*, 130 *Fed. Rep.*, 676 (C. C. A., Second Circuit) which is very much in point.

These and other cases all sustain the proposition, that although a party may be guilty of a violation of the law, yet that fact does not debar him from the enforcement of a collateral agreement, *e. g.*, one for the sale of merchandise, such as that in the present case.

II.

Again, assuming that the plaintiff was a Trust, and that it could have been lawfully proceeded against, under the Act of Congress of July 2, 1900, yet that fact does not prevent the plaintiff from recovering for the goods which it sold and delivered to the defendants.

While the statute declares a trust, or combination, such as the plaintiff is claimed to be, illegal, and subjects every person entering into the combination to fine and imprisonment, and makes adequate provision for its annulment, yet there is nothing in the act, which permits one who purchases goods from such a trust, to despoil it of its property. The Government of the United States is sufficiently powerful to cope with an unlawful monopoly, without legalizing robbery of the character which the defendants are seeking to perpetrate, through the aid of the Courts.

Dealing with this subject Mr. Justice Harlan said in the *Connolly case* (*supra*):

"If the contract between the plaintiff corporation and the other named corporations, persons and companies, or the combination thereby formed, was illegal under the act of Congress, then all those, whether persons, corporations or associations, directly connected therewith, became subject to the penalties prescribed by Congress. But the act does not declare illegal or void any sale made by such combination, or by its agents, of property it acquired or which came into its possession for the purpose of being sold,—such property

not being at the time in the course of transportation from one state to another or to a foreign country. The buyer could not refuse to comply with his contract of purchase upon the ground that the seller was an illegal combination which might be restrained or suppressed in the mode prescribed by the act of Congress; for Congress did not declare that a combination illegally formed under the act of 1890 should not, in the conduct of its business, become the owner of property which it might sell to whomsoever wished to buy it So that there is no necessary legal connection here between the sale of pipe to the defendants by the plaintiff corporation and the alleged arrangement made by it with other corporations, companies and firms. The contracts under which the pipe in question was sold were, as already said, collateral to the arrangement for the combination referred to, and this is not an action to enforce the terms of such arrangement. That combination may have been illegal, and yet the sale to the defendants was valid.

"In the case of *The Charles E. Wisewall,* 74 Fed. Rep., 802, which was a libel *in rem* by certain tug owners against a steam dredge to recover the value of certain services rendered by the tug in towing the dredges, it was sought to avoid payment for the services thus rendered upon the ground that the tug owners were members of an association which was illegal and void under the Sherman act. The Court assuming that the agreement by which the tugs acted in unison was prohibited by that act, said: 'He (the claimant) should not be permited to repudiate his just debts to the individual tugs because their association was illegal Having asked for their services, and having accepted the benefit thereof, he should pay. * * * An agreement by the tug *Mayflower* to tow the dredge *Wisewall,* for a reasonable sum, from Albany to Troy, is not void because the *Mayflower* is associated with other tugs to regulate the price of towing at Albany. Should the claim-

ant purchase a pair of trousers at an Albany clothing shop, he would find it difficult to avoid paying their actual market value because the vendor and other tailors of that city had combined to keep up prices.' "

The case of *The Charles E. Wisewall,* was affirmed by the Circuit Court of Appeals of the Second Circuit, in 86 *Fed. Rep.,* 671, where Judge Lacombe said:

"The defendant's proposition is that a person who has given work, labor and services to another, upon the other's employment, may not recover their fair and reasonable value if, during the time that he rendered such services, he had been engaged with other men in like employment with himself in a combination to charge for such services as any of them might render according to some scale agreed upon by them. We know of no principle of law which calls for the adoption of such a rule, and are referred to no authorities which support it. The cases cited on appellant's brief are not applicable. The only contract considered in U. S. *v.* Trans-Missouri Freight Association, 166 U. S., 290, was the contract between the members of the combination. * * * The test, whether a demand connected with an illegal transaction is capable of being enforced at law, is whether the plaintiff requires the aid of the illegal transaction to establish his case. If he cannot open his case, without showing that he has broken the law, a Court will not assist him. But if he does not claim through the medium of the illegal transaction, he may recover. In the case at bar libelants clearly did not require the aid of the alleged illegal transaction to establish their case."

In *Dickerman* v. *Northern Trust Company* (176 *U. S.,* 195) an action was brought for the foreclosure of a mortgage executed by the Columbia Straw

Paper Company. Various of the stockholders of the corporation intervened, and sought to interpose the defence that the organization of the defendant company, and the execution of the bonds and mortgage, were parts of a scheme to form a trust or unlawful combination in restraint of trade, violative of the act of Congress of July 2, 1890, and of the act of the General Assembly of Illinois, to provide for the punishment of persons, partnership or corporations forming trusts, pools and combines. This Court, however, held that this defence was not available, Mr. Justice Brown saying:

"But admitting everything that can be claimed for the combination in this connection, we do not see how it can affect materially the foreclosure of this mortgage. If this were a proceeding in *quo warranto* to attack the organization of the corporation, or an indictment under the statute of Illinois, or an action against a member of the combination to enforce any of the provisions of the original contract, the validity of such contract would become an important question. But in a suit to foreclose a mortgage upon the property of the concern, it is difficult to see how the purpose for which the corporation was originally organized can become a material inquiry. So long as the corporation existed, it had the power to create a mortgage, and when that mortgage became due the trustee had a right to foreclose. This trustee was no party to the illegal combination, and the fraud if any existed was wholly extrinsic to the mortgage. It would seem a curious defence if a mortgagor could set up against the mortgage that the property covered by it was used for an illegal purpose unknown to the mortgagee, as for instance, gambling and therefore that the mortgage was invalid."

See *Lafayette Bridge Co.* vs. *City of Streator*, 105 *Fed. Rep.*, 229.
See *Cincinnati Packet Co.* vs. *Bay*, 200 *U. S.*, 179, 185.

III.

The contract between the plaintiff and the defendants was not one in restraint of trade and none of its provisions will debar the plaintiff from recovering for goods sold and delivered to the defendants.

(*a*) *The Contract between the Plaintiff and Defendant.*

It is alleged that the merchandise for which the plaintiff seeks to recover, was sold under a contract entered into between the plaintiff and the defendants, whereby the former agreed to sell to the latter, known as jobbers, the entire requirements in their business of selling wall paper, for the year ending July 1st, 1900, to an amount specified, such goods to be of the manufacture of the factories with whom the plaintiff was under contract, the Jobbers reserving to themselves, the right to purchase from others, such merchandise as they might need in excess of an amount specified. The Jobbers were to be allowed discounts at rates fixed in an accompanying schedule, and another schedule which was attached to the contract, specified the

road prices, at which the plaintiff sold its goods, for the term named in the contract, to dealers other than Jobbers, and also contained a statement of discounts allowed to such customers for quantity purchases, together with terms of credit and freight allowances to which such customers were entitled.

Thereupon follows a provision, which is made the subject of criticism, and which reads as follows:

"It is an essential condition of this agreement that the Jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in Schedule B, the intent hereof being to assure the comapny against the use by the Jobber of this agreement to undersell the company."

It is also alleged that the defendant executed an instrument, described as Exhibit 5, which is in substance as follows:

"In consideration of your having sold us wall paper, etc., at list prices and at quantity discounts as per following schedule * * * we hereby agreement to sell any such goods to others on terms better or more favorable than those specified in the above schedule nor lower than said list prices, and our faithful performance of this agreement is a condition precedent to the filing of our order. The intent hereof is to protect you fully against being undersold by us to customers to whom you do not allow quantity discounts."

These clauses are claimed to stamp the contract, between the plaintiff and the defendant, with invalidity, and to debar the former from resorting

to the courts, for the purpose of recovering for the merchandise received by the defendants.

(b) The Similarity of this Contract with that in the Connolly Case.

It has already been urged, that this case is governed by the decision of this Court in *Connolly* v. *Union Sewer Pipe Company* (*supra*). A careful examination of the record in that case will indicate, that it involved the special feature upon which the defendants in the present case place so much reliance.

The contract under which Connolly and Dee there received the merchandise, for which a recovery was sought against them respectively, is set forth in the record of that case, and contains the following clauses:

"The party of the first part agrees to sell and deliver to the party of the second part sewer pipe, free on board cars at its factories, at the following discounts of the western price list, to wit: 24" socket pipe 80%, 6" and 9" ring pipes 85%. * * * In consideration of the foregoing agreement the party of the second part agrees to purchase and handle exclusively the sewer pipe handled and sold by the first party except where the first party is unable to furnish the party of the second part, and to place with the first party all orders for sewer pipe that they the second party may make.

"In consideration of receiving the entire trade for sewer pipe from the party of the second part it is agreed by the party of the first part that a rebate of one per cent. of the gross sale be allowed to the second party. Said rebate to be paid the second party at the close of each year provided the terms of this agreement have been faithfully carried out. * * *

"It is further agreed that said first party permits said second party to purchase twenty-five cars of sewer pipe from A. B. Camp, Greentown, Ohio, and twenty-five carloads of pipe from the Chicago Sewer Pipe Company, Brazil, Indiana, but no more; and said second party consents to allow said first party access to his books to determine when above pipe has been delivered."

"The said second party further agrees to sell on and after September 1, 1895, all sewer pipe purchased from the party of the first part, free on board cars in carload lots, or at their respective yards or places of business in the City of Chicago or in Cook County, at the following discounts from the Western price list, namely:

6" and 9" ring pipe, 70% off list.
24" socket pipe, 60% off list.

"In no case shall seconds or culls be shipped by the first party for use within the corporate limits of the City of Chicago." (See Record in U. S. Supreme Court, pp. 23, 24).

The record in that case further shows (page 246), that among the errors assigned, was the following:

"The Court erred * * * f. In ruling that no contract in this cause was sued upon which in itself was in restraint of trade, whereas a written contract between the plaintiff and the defendant Dee in restraint of trade and void under the common and general law, both of the State of Ohio and of the State of Illinois, constituted the foundation of the plaintiff's cause of action, which contract was in the words and figures following, to wit."

Then follows a *verbatim* copy of the contract already referred to.

This assignment of error was called to the attention of this Court on pages 30 and 31 of the brief filed, in that case, by the plaintiff in error.

It is thus clear that the *Connolly* case is identical, in every essential feature, with the present case. The Union Sewer Pipe Company was organized to handle the product of various sewer pipe manufactories. It entered into contracts with jobbers, wherein the prices charged to the latter were fixed, in accordance with a price list promulgated by the vendor. Discounts from such price list allowed to the jobber were specified. The jobber was required to purchase all of his goods from the vendor, with certain specified exceptions, as to which the jobber was permitted to purchase in specified and limited quantities from other producers. The jobber was further restricted, as to the terms on which he might sell the sewer pipe purchased from the vendor, and the discounts which he was permitted to allow to his customers.

And yet, although the validity of this contract was squarely presented, on the trial, and also on appeal, by the assignments of errors and briefs of counsel, this Court necessarily held, that these circumstances constituted no defense, and did not preclude the vendor from recovering the purchase price of merchandise delivered, under its contract, to the vendee.

The reason of this decision is obvious. The vendor was under no obligation to sell to the vendee. It had the right to sell at such prices and on such terms of payment as it saw fit. It was also its privilege to sell under such conditions, as would preclude its vendee from reselling the goods, so purchased, to the injury of the vendor.

Otherwise the vendee might have wrought havoc with the vendor's trade, by breeding suspicion as to the regularity of its business methods, and of its good faith and fairness towards the trade. It would have unsettled the vendor's market, and would have tended to interfere with the vendor's ability to sell its goods.

The condition inserted in the contract now under consideration, was intended only for the protection of the vendor, from the acts of its own customer, who was not a producer, and who but for the contract in question, could not have acquired the vendor's goods. The agreement did not assume to refer to any merchandise, other than that purchased by the vendee from the vendor, under the terms of the contract. It did not affect or seek to regulate the terms on which the vendee might have sold merchandise purchased from any other producer, or even merchandise of the vendor, which the defendants might have purchased from some other jobber, in the open market, at public or private sale, the prohibition being "that the Jobber will not directly or indirectly sell or offer "for sale *any of the merchandise purchased from "the company hereunder at lower rates, etc.*"

(*c*) *The validity of such a contract as the present was not only necessarily adjudged in the Connolly case, but was expressly held in United States* v. *Addystone Pipe & Steel Co.* (85 *Fed. Rep.* 271), *subsequently affirmed here.*

There the contract between various producers of iron pipe in different states formed a combination whereby the territory in which they operated was divided into "reserved" cities and "pay"

territory. The reserved cities were allotted to various members of the combination, free of competition from the others, although provision was made for pretended bids by the latter at prices previously arranged. In the pay territory all offers to purchase pipe were submitted to a committee, which determined the price and then awarded the contract to that member of the combination who agreed to pay the largest "bonus" to be divided among the others. This was held to be an unlawful combination, both at common law and under the *Anti-Trust Act* of July 2, 1890.

In the course of the luminous opinion of Judge Taft, in which Mr. Justice Harlan and Judge Lurton concurred, the inhibitions against restraints of trade at common law were first considered, and the genesis of covenants, regarded as valid, which were apparently in restraint of trade but in reality not so, was discussed. At page 280 he says:

"After a time it became apparent to the people and the courts that it was in the interest of trade that certain covenants in restraint of trade should be enforced. It was of importance, as an incentive to industry and honest dealing in trade, that, after a man had built up a business with an extensive good will, he should be able to sell his business and good will to the best advantage, and he could not do so unless he could bind himself by an enforceable contract not to engage in the same business in such a way as to prevent injury to that which he was about to sell. It was equally for the good of the public and trade when partners dissolved and one took the business, or they divided the business, that each partner might bind himself not to do anything in trade thereafter which would derogate from his grant of the interest conveyed to his former partner. Again, when

two men became partners in a business, although their union might reduce competition, this effect was only an incident to the main purpose of a union of their capital, enterprise and energy to carry on a successful business, and one useful to the community. Restrictions in the articles of partnership upon the business activity of the members, with a view of securing their entire effort in the common enterprise, were, of course, only ancilary to the main end of the union, and were to be encouraged. *Again, when one in business sold property with which the buyer might set up a rival business, it was certainly reasonable that the seller should be able to restrain the buyer from doing him an injury which, but for the sale, the buyer would be unable to inflict. This was not reducing competition, but was only securing the seller against an increase of competition of his own creating. Such an exception was necessary to promote the free purchase and sale of property.* Again, it was of importance that business men and profesional men should have every motive to employ the ablest assistants, and to instruct them thoroughly; but they would naturally be reluctant to do so unless such assistants were able to bind themselves not to set up a rival business in the vicinity after learning the details and secrets of the business of their employers. * * * For the reasons given then, covenants in partial restraint of trade are generally upheld as valid when they are agreements (1) by the seller of property or business not to compete with the buyer in such a way as to derogate from the value of the property or business sold; (2) by a retiring partner not to compete with the firm; (3) by a partner pending the partnership not to do anything to interfere, by competition or otherwise, with the business of the firm; (4) by the buyer of property not to use the same in competition with the business retained by the seller; and (5) by an assistant, servant or agent not to compete with his master or employer after the expiration of his time of service."

Illustrations are given of these various classes of cases, and among those relating to the fourth class are *American Strawboard Co.* v. *Haldeman Paper Co.*, 83 *Fed. Rep.*, 619; *Hitchcock* v. *Anthony*, 83 *Fed. Rep.*, 779 (*both decisions of this Court*); *Navigation Co.* v. *Windsor*, 20 *Wallace*, 64; *Dunlop* v. *Gregory*, 10 *N. Y.*, 241, and *Hodge* v. *Sloan*, 107 *N. Y.*, 244, which will be presently considered.

The opinion of Judge Taft then proceeds to consider various combinations of producers and manufacturers, which *inter sese* were declared to be void, as being in restraint of trade, after which he says (p. 290):

"In the foregoing cases the only consideration of the agreement restraining the trade of one party was the agreement of the other to the same effect, and there was no relation of partnership, *or of vendor and vendee*, or of employer and employee. Where such relations exists between the parties, as already stated, restraints are usually enforceable if commensurate only with the reasonable protection of the coventee in respect to the main transactions affected by the contract."

This decision was affirmed in *175* U. S., *211*, without in any way qualifying the language of Judge Taft, the case being treated as a combination among manufacturers to restrain production, and the sale of their products.

Returning now to the cases cited in the opinion of Judge Taft, a brief consideration of them will be found useful.

In *American Strawboard Co.* v. *Haldeman Paper Co.* (83 *Fed. Rep.*, 619), decided by the Circuit Court of Appeals of the Sixth Circuit, the

Court, consisting of Mr. Justice Harlan and Judges Taft and Lurton, it appeared that the lease of a paper mill, with privilege of purchase, contained a covenant that a lessee would not during the term, nor for twenty years in case of purchase, make on the premises certain classes of paper which the lessor was engaged in making elsewhere. A question arose as to the validity of such a covenant and in an able opinion rendered by Judge Lurton, the covenant was held enforceable. Among other things he said (p. 624):

"The restraint imposed is partial and not general and manifestly is no larger than necessary for the protection of the owner and lessor against a particular use of the property for a limited time, in a business which directly competed with the business conducted by it."

In *Hitchcock* v. *Anthony* (83 *Fed. Rep.*, 779), decided by the same Circuit Court of Appeals, composed of Judges Taft, Lurton and Clark, it appeared that the lessee of a dock upon which he conducted the business of dealing in coal and fish, sold and conveyed certain real estate nearby, on which was situated another dock, to a dealer in lumber, the purchaser entering into an agreement at the same time by which he bound himself in general terms not to engage in the coal or fish business for a term of years, or do anything that would conflict with the said coal or fish business of the said grantor. This covenant was also held to be valid, Judge Lurton saying (p. 781):

"Now, this business which Anthony was conducting was one which could only be conducted upon a dock, and the dock appurtenant to the

property conveyed to Hitchcock was so situated as that a similar business could be carried on upon it. The object of Anthony was to prevent competion, not at Detour generally, but by the use of this dock just conveyed to Hitchcock, and adapted to the doing of a competitive business. The circuit judge was of opinion that the circumstances were such as to justify a limitation of this restriction upon Hitchcock to the property so sold to him. To this conclusion we fully agree. Hitchcock's obligation, while widened by the stipulation that he should do nothing which should conflict with Anthony's coal and fish business as to details, is at the same time limited, by implication, in respect of locality. The agreement had reference alone to the uses of the dock sold to him, and bound him to make no such use of that dock, by himself or another, as should result in a competitive coal and fish business thereon."

In *Dunlop* v. *Gregory* (10 *N. Y.*, 241) the plaintiffs owned a line of boats running between New York and Albany on the Hudson River. They sold one of their boats to the defendant and received back a covenant from the vendee that the boat sold should never under any circumstances be run as a passage boat north of Saugerties, a town lying on the Hudson River, about midway between New York and Albany. This covenant was held to be a valid one.

In *Hodge* v. *Sloan* (107 *N. Y.*, 244) the plaintiff's testator was the owner of lands containing deposits of building sand. The sale of such sand constituted his only business. The defendant's grantor offered to purchase a small parcel of the land but the owner declined to sell on the ground that it would interfere with his business. The

plaintiff's grantee thereupon agreed to purchase, covenanting not to sell any sand from off the parcel conveyed to him. The original purchaser thereafter conveyed to the defendant, who opened a pit on his land and sold sand therefrom. He was enjoined from doing so notwithstanding the claim that the covenant was invalid. Mr. Justice Danforth said:

"The subject of the contract at the bottom of this controversy was a piece of land which Sloan wanted to buy and which the plaintiff was willing to sell, provided it should not be made an instrument for the destruction of his means of livelihood or detrimental to his business. The principle which favors freedom of trade requires that every man shall be at liberty to work for himself, and shall not deprive himself or the State of the benefit to his industry by any contract that he enters into. The same principle must justify a party in withholding from market the tools or instruments, or means by which he gains the support of his family, or if, as in the case before us, the instrument or means are susceptible of several uses, one of which will work mischief to himself by the loss or impairment of his livelihood, there is no reason of public policy which requires him upon a sale of the instrument to consent to that use, or prohibits him from binding his vendee against it. * * * I cannot find that such a covenant contravenes any rule of public policy, nor that it is incapable of being enforced in a court of equity. It stands upon a good consideration, and is not larger than is necessary for the protection of the covenantee in the enjoyment of his business."

In *Navigation Co.* v. *Winsor* (20 *Wall.*, 64), which is a leading case on this branch of the law, it appeared that the Californian Steam Navigation Company, which was engaged in navigating the

waters of California alone, sold, in 1864, a steamer to the Oregon Steam Navigation Company, engaged in navigating the Columbia River, subject to a stipulation that the Oregon Company would not employ such steamer, or suffer it to be employed, for ten years from the date of the sale in any waters of California. In 1867 the Oregon Company sold the same steamer to Winsor, who was engaged in navigating Puget Sound, subject to a stipulation that it should not be run or employed on the waters of California or the Columbia River and its tributaries for the period of ten years thereafter.

The Oregon Company sought to enforce this contract and to recover the amount stipulated as liquidated damages for a breach thereof, and it was declared to be enforceable. In the course of his opinion Mr. Justice Bradley said:

"In accordance with these principles it is well settled that a stipulation by a vendee of any trade, business or establishment, that the vendor shall not exercise the same trade or business, or erect a similar establishment within a reasonable distance, so as not to interfere with the value of the trade, business or thing purchased, is reasonable and valid. In like manner a stipulation by the vendor of an article to be used in a business or trade in which he is himself engaged, that it shall not be used within a reasonable region or distance, so as not to interfere with his said business or trade, is also valid and binding. * * * To apply these principles to the case before us: The California Steam Navigation Company, being engaged in the business of transportation on the rivers, bays and waters of California, was willing to sell one of their steamers to the Oregon Steam Navigation Company which was engaged in a similar business on the Columbia River and its tributaries, pro-

vided the latter company would agree that the steamer should not be used in the California waters for the period of ten years from the first day of May, 1864. This stipulation was necessary to protect the former company from interference with its own business. It had no tendency to destroy the usefulness of the steamer, and did not deprive the country of any industrial agency. The transaction merely transferred the steamer from the employment of one company to that of another situated and doing business in another state. It involved no transfer of residence or allegiance on the part of the vendee in order to pursue its employment, nor any cessation or diminution of its business whatever. The presumption is that the arrangement was mutually beneficial to both companies, and that it promoted the general interests of commerce on the Pacific coast. Again, the Oregon Company were afterwards willing to dispose of the same steamer to the defendants, who were engaged in the like business of transportation in the waters of Puget Sound, Washington Territory, provided that the latter would agree that the steamer should not be run or employed upon any of the routes of travel or rivers, bays, or waters of California, or the Columbia River and its tributaries, for the period of ten years from the first day of May, 1867. This stipulation excluded the steamer from the territory covered by the former stipulation exacted by the California Company, and also from the territory occupied by the Oregon Company itself. The latter portion of the stipulation stands on the same ground and reason as did the first stipulation between the California and Oregon companies. The former portion was necessary in order that the Oregon Company might faithfully keep its covenant with the California Company."

(d) Other Decisions indicating Validity of Contract.

In *Bement* v. *National Harrow Co.* (186 *U. S.*, 70) it was held that conditions imposed by a patentee in a license of the right to manufacture and sell the patented article, restricting the terms upon which the article manufactured under such license might be used and the price to be demanded therefore, did not constitute such a restraint upon commerce as is forbidden by the *Anti-Trust Law of Congress.*

In that case the licensee agreed not to manufacture or sell any harrows other than those which it had made under its patent, or which it was licensed to manufacture and sell under the terms of the license, except such other style and construction as it may be licensed to manufacture and sell by the licensor. The licensor agreed not to license any other person, than the licensee, to manufacture or sell any harrow of the peculiar style and construction then used or sold by the licensee. The agreement was held to be valid, the Court saying:

"There is nothing which violates the act in the agreement that the plaintiff would not license any other person than the defendant to manufacture or sell any harrow of the peculiar style and construction then used or sold by the defendant. It is a proper provision for the protection of the individual who is the licensee, and is nothing more in effect than an assignment or sale of the exclusive right to manufacture and vend the article. In brief, after a careful examination of these contracts, we are unable to find any provision in them, either taken separately or in connection with all the others therein contained, which would ren-

der the contracts between these parties void as in violation of the Act of Congress. * * * In these contracts provision is expressly made not alone for manufacture, but for the sale of the manufactured product throughout the United States, and at prices which are particularly stated and which the seller is not at liberty to decrease without the assent of the licensor."

This case practically overrules *National Harrow Co.* v. *Hench*, 83 Fed. Rep., 36, and *National Harow Co.* v. *Quick*, 67 Fed. Rep., 130.

The case of *Dolph* v. *Troy Laundry Machine Co.* (28 *Fed. Rep.*, 553) was likewise cited by Judge Taft with approval in *U. S.* vs. *Addyston Pipe & Steel Co.* (*supra*). It was there held that a contract under which two rival manufacturers agreed upon a schedule of selling prices for their goods, one of them discontinuing his business and becoming a partner with the other for a specified term, was not void as in restraint of trade.

Although that case was reversed in 138 *U. S.*, 617, Mr. Justice Brewer said:

"The contract was not against public policy; simply a contract between a manufacturer and a dealer with reference to the manufacture and sale of washing machines."

In *Stein* v. *Dorman* (25 Ohio St., 580) the grantee of lands covenanted that the premises conveyed should not be used or occupied as a hotel so long as certain other property owned by the grantor should be used for that purpose. The validity of this covenant was questioned by the grantee, but the Court, Mr. Justice White, writing the opinion, said:

"It is claimed in argument that the restriction is void as being in restraint of trade. This claim cannot avail. It is not a contract in general restraint of trade, but is limited in its application to a specific parcel of real property and forbids its use to a particular business. The consideration is sufficient, for the restriction formed a material part of the consideration by which the property was obtained and under the circumstances must be regarded as reasonable and not oppressive."

In *New York Bank Note Co.* v. *Hamilton Bank Note Co.* (83 *Hun*, 593) it was held that a manufacturer of presses could lawfully restrict the purchaser in the use of the press purchased. This ruling was affirmed on a subsequent appeal in *180 N. Y., 280, 295.*

In *Brett* v. *Ebel* (29 *App. Div.*, 256), the defendant sold all his interest and good will in the business of freighting vessels for a time mentioned and agreed not to solicit orders or to do any business with Port au Prince, in consideration of a certain sum to be paid to him. The defendant had no material plant but merely a good will. It was held that the covenant was valid and enforceable and was supported by the following decisions of the New York Court of Appeals: *Diamond Match Co.* v. *Roeber*, 106 *N. Y.*, 473; *Leslie* v. *Lorillard*, 110 *N. Y.*, 519; *Tode* v. *Gross*, 127 *N. Y.*, 480; *Underwood* v. *Smith*, 46 *N. Y. St. Rep.*, 654; *aff'd.* 135 *N. Y.*, 651; *Francisco* v. *Smith*, 143 *N. Y.*, 488.

The Federal Anti-Trust law was then considered in the light of the decisions thereunder. The case of *U. S.* v. *Trans-Missouri Freight Association* (166 *U. S.*, 290) was reviewed and Mr. Justice Barrett said:

"The opinion in that case, however, must be read in the light of its facts. The contract there was not founded upon or connected with any sale of property or good will. Thus the restraint was not ancillary to any lawful contract. The particular contract there under consideration was one which was entered into between competing railroads for the purpose of thereby affecting traffic rates for transportation of persons and property. We find nothing in the opinion to warrant the extreme view taken by the defendants here. On the contrary, we find language suggestive of the opposite and certainly the more reasonable view. 'A contract,' said Judge Peckham at p. 329, 'which is the mere accompaniment of the sale of property, and thus entered into for the purpose of enhancing the price at which the vendor sells it, which in effect is collateral to such sale, and where the main purpose of the whole contract is accomplished by such sale, might not be included within the letter or spirit of the statute in question.' "

Referring further to the statute Mr. Justice Barrett proceeds:

"But it certainly was not intended to prohibit a man from selling his business in the ordinary way and from thereupon obtaining the full value thereof through the instrumentality of an incidental covenant not to compete with the purchaser within some limited area. The rules upon this subject are very fully and clearly stated and the cases reviewed in *United States* v. *Addyston Pipe & Steel Co.* (85 *Fed. Rep.*, 271). The covenants which are generally upheld are there classified by Judge Taft."

It is also to be noted that the counsel for the plaintiff in that case was Mr. Whitney, who, as Assistant Attorney General, represented the Gov-

ernment in the *Addyston Pipe & Steel Company case.*

In *Walsh* v. *Dwight* (40 *App. Div.*, 513) contracts were entered into by the manufacture of a certain brand of salaratus and soda with jobbers and dealers in that commodity, whereby the manufacturer agreed to sell the brand manufactured by him to such jobbers and dealers at a reduced price in consideration of their agreement not to sell it or different brands of the same article manufactured by other persons at less than a stipulated price.

These contracts were held not to be illegal as to rival manufacturers of salaratus and soda either at common law or by reason of the provisions of the *Anti-Trust Law*. Mr. Justice Ingraham said:

"Nor can it be that a manufacturer of merchandise cannot agree to sell to others upon condition that the vendees in selling at retail should charge a specified price for the goods sold, or should sell only the manufactured product of the manufacturer. If a dealer in articles of this kind, for his own advantage, agrees to confine his business to a particular line of goods, or agrees with the manufacturer to charge a particular price for the articles which he sells in his business, such an agreement is not illegal as in restraint of trade or as tending to create a monopoly, as there is nothing in the agreement to prevent others from engaging in the business, or the manufacturer of other articles from selling their product to any one who is willing to buy."

The opinion then proceeds to consider the Anti-Trust Laws of New York, which are to the effect that every contract or combination in the form of a trust or otherwise, whereby competition in the State of New York in the supply or the price of

any article or commodity of common use in said State for the support of life and health may be restrained or prevented, for the purpose of advancing prices, is declared illegal. Mr. Justice Ingraham, referring to this statute says:

"This act did not have the effect of preventing a manufacturer from fixing the price at which his articles should be sold, or from making an agreement with these persons who acted as the jobbers or retailers of his manufactured articles that they would deal exclusively in his merchandise, or would not sell the merchandise of other persons at a less price than that for which his product was sold."

The opinion also refers to *Lough* v. *Outerbridge* (143 *N. Y.*, 283), where the validity of an agreement by a carrier to give reduced rates to customers who stipulate to give it all their business and which refuses those rates to others who are not able or willing to so stipulate, was considered and held valid. In that case Judge O'Brien said:

"I cannot perceive anything unlawful or againt the public good in seeking by such means to retain a business * * * On this branch of the argument the remarks of Lord Coleridge in the case of *Mogul S. S. Co.* v. *Mc Gregor* (*L. R.*, 21 *Q. B. D.*, 544) are applicable 'The defendants are traders with enormous sums of money embarked in their adventure, and naturally and allowably desire to reap a profit from their trade. They have a right to push their lawful trades by all lawful means, to keep their trade in their own hands, and by the same means to exclude others from its benefits, if they can. Amongst lawful means is certainly included the inducing by profitable offers customers to deal with them rather than with their rivals. It follows that they may, if they see fit, endeavor to induce customers to deal with them

exclusively by giving notice that only to exclusive customers will they give the advantage of their probable offers. I do not think it matters that the withdrawal of the advantages is out of all proportion to the injury inflicted by those who withdraw them on the customers who decline to deal exclusively with them dealing with other traders.'"

These cases have been recently followed in *Park & Sons Co.* v. *National Druggists' Assn.* (54 *App. Div.*, 223, 227), where Mr. Justice Rumsey said:

"It cannot be denied that each manufacturer has the right to refuse to sell to any one if he sees fit. If he chooses to make his goods and sell them he has the right to fix any price he chooses upon them. Not only so, but he has the right to select his own customers. He may agree to dispose of all his goods to one person or he may be willing to supply the whole trade except one person, and whatever he chooses to do is a matter with which the law has no concern, because the goods are his to be kept or sold as he pleases. So he may not only fix his own price, but he may impose such terms as he sees fit, or can exact from his customers. These matters are absolutely within his own control. If each manufacturer is at liberty thus to control the sale of his goods, undoubtedly all may, if they see fit, agree together to enforce conditions which each one seeks to impose upon the dealing with the article which he makes. The action of each manufacturer in fixing prices and imposing conditions of sale is undoubtedly legal."

The decision in *Park & Sons Co.* v. *National Wholesale Druggists Association, 175 N. Y., 1,* is a distinct recognition of the validity of the provision in the contract between the plaintiff and the defendant.

It then appeared that various manufacturers of medicines and remedies, at the instance of the wholesale druggists entered into an agreement whereby the manufacturers fixed a uniform jobbing price for fixed quantities of their goods, and a selling price which the wholesale druggists were to maintain. The plaintiff, refusing to be bound by such an agreement, brought an action to have the agreement, plan and mode of conducting the business of the defendant declared illegal and from carrying on its business under the conditions specified. A demurrer was interposed to the volumnious complaint which set forth all the facts and circumstances pertaining to the method of business adopted by the defendant and in which the defendant's acts were characterized as being in restraint of trade, contrary to public policy ,conspiracy, and as involving unlawful threats, intimidation, blacklisting and boycotting.

These general allegations characterizing the acts of the defendants were held of no avail, Chief Judge Parker saying at page 21:

"The plaintiff's characterization of the acts of the defendants do not establish a cause of action against the defendants if the acts themselves do not."

Again he says at page 20:

"This langauage has a formidable sound, but subjected to the same analyses as was given to the word 'threats' in the connection in which it was used in the *National Protective Association Case* (*170 N. Y., 315*) it will prove to be without force."

In the case referred to (*170 N. Y., 315*) Chief Judge Parker says at page 331:

"The findings conclude with a sentence which commences as follows: 'I find that the threats made by the defendants and the acts of the said walking delegates in causing the discharge of the members of the plaintiff association by means of threats of a general strike of other workmen, constituted an illegal combination and conspiracy.' That is not a finding of fact, but a conclusion of law that the trial court erroneously, as I think, attempted to draw from the facts found, which I have already discussed, and which clearly, in my judgment, require this court to hold that the defendants acted within their legal rights."

The Court of Appeals, therefore, in the *Park & Sons Company Case,* construed the facts as pleaded, and in elaborate opinions came to the conclusion that the agreement entered into between the manufacturers and the wholesale druggists was not against public policy, but was in all respects valid.

In the course of his opinion, after indicating the nature of the controversy, Judge Haight said pp. 7-9):

"It, therefore, become necessary to determine whether the plan for the conducting of the business of the sale of proprietary goods, adopted by the association and which it requested the proprietors or manufacturers to adopt and carry out, is lawful. The question thus presented is of considerable importance. The plan, as we have seen, in its substantial features, has been in operation nearly twenty years and in its final completed form nearly ten years. This plan, as I understand, is not one confined to the sale of proprietary medicines, but is one that has been adopted by many manufacturers of merchandise and other goods where manufacturers have established a trade mark and have gained a reputation which

they wish to maintain throughout the country for character, quality and durability of the goods which they manufacture. They have consequently, established prices at which their goods shall be sold to the consumer and require all wholesale and retail dealers to supply the consumer at the price list established. The decision, therefore, reached herein many largely affect the plan of conducting business in other articles of commerce * * * The proprietors, having the exclusive right to manufacture and sell their goods, had the right to adopt such plan with reference to the disposal thereof as they saw fit, and if they became convinced that the contract or rebate plan, so-called, was more advantageous to them and more fair and just to the public, by establishing a uniform price in all sections of the country, they had the right to adopt the same and no one could complain.

"Nor does the plan appear to me to be in restraint of trade. It is true that it does away with the competition among dealers as to prices, but it creates no restriction upon them as to the quantities that they may be able to sell or the territory within which they may confine their transactions; but upon the question of prices we must bear in mind that the goods are covered by patent rights and trade marks, which give the proprietors the exclusive right of specifying prices at which the articles shall be sold, and following this, the right also to require dealers to maintain the prices specified. The plan does not operate to restrict sales in any localities, but contemplates a ready method of distributing the goods throughout the entire country. It is, in effect, the creating of an agency on the part of the proprietors, by which every druggist throughout the United States may receive the goods and dispose of them as agents of the principal, receiving the commissions agreed upon therefor.

"Is this plan against public policy? An active competition and rivalry in business is, undoubtedly, conducive to the public welfare, but we must not

shut our eyes to the fact that competition may be carried to such an extent as to accomplish the financial ruin of those engaged therein and thus result in a derangement of the business, an inconvenience to consumers, and in public harm. While public policy demands a healthy competition it abhors favoritism, secret rebates and unfair dealing and commends the conduct of business in such a way as to serve all consumers alike. That this is the tendency of modern times is evident from the recent discussions and legislation upon the subject of interstate commerce. One of the cardinal and chief principles of the plan adopted is the establishing of a uniform price by proprietors which necessitates the service of all persons alike throughout the United States, the proprietors subjecting themselves to the extra expense for freight, etc., in remote sections of the country. I can discover nothing in this which is detrimental to the public policy of the country. The right would certainly not be denied to the manufacturer of a gvien remedy to adopt the rule that he would only sell it to the jobbers of the country at a certain long price and would not allow a discount of ten per cent where they refused to maintain his price. In other words, the manufacturer says to the jobbers of the country, I manufacture a medicine that I will sell for one dollar a bottle, and it is my desire that it shall be sold at that price per bottle throughout the country. If you will take consignments of this medicine from me, billed to you, at that price per bottle, I will allow you a rebate of ten per cent, and if I find that you are selling at a lower price than billed to you, I will allow no rebate. If this arrangement is not satisfactory to you, I prefer to keep my manufactured stock on hand. These are the only conditions under which I will ship my manufactured article.

"Surely, there is nothing in this approaching restraint of trade or the violation of the principle of public policy. It is simply allowing a man to do what he will with his own."

Chief Judge Parker said:

"The object of this association, however, is not to fix prices at which the manufacturer's goods must be sold. It attempts no restraint whatever upon the manufacturer in making prices. He may lower or increase the price at his pleasure. In that respect he is precisely as free as he was before the association was formed and he became a member of it. He may name the price which the consumer shall pay for his article now as he could then, which means that he can both make the price and enforce it by contract (Garst *v.* Harris, 177 Mass., 72; Fowle *v.* Park, 131 U. S., 88; Walsh *v.* Dwight, 40 App. Div., 513), p. 15 * * *

"After forming the association they adopted, first, what is called in the complaint the *rebate* plan. By that plan the proprietor fixes the price of his article known as the 'long price' and agrees to pay expressage and cartage to any point from which it may be ordered. The result is that if the long price is one dollar, the article is sold to the consumer at exactly that price in all parts of the country, which is very important to the proprietors; as they view it; and it must be borne in mind steadily that it is setted by authority that the proprietor of patent medicines has the right to fix the price at which his article shall go to the consumer, and a druggist who takes his article for sale under an agreement that he will maintain the price is liable to respond in damages if he violates the contract (Garst case and others, *supra*). This plan was found to be insufficient to accomplish the desired result because distributors violated their contracts to sell at the 'long price.'

"The *Detroit* plan was then devised, and all the proprietors were to sell their goods only to wholesale or jobbing druggists and not to the retail trade, and the committee on proprietary goods, which was composed of wholesale druggists, members of the association, agreed to furnish proprietors lists of wholesalers who could be depended upon to keep their contracts, and *cut off lists* of

dealers who did not keep their contracts or who bought as a mere cover for dealers who were known not to keep their contracts. Under this plan every wholesaler is at liberty to buy all the goods he chooses of the manufacturers and can secure the same rebate as any member of the association, but he has to agree to the plan and he has to keep his agreement P. 17 * * *

"It was clearly legal for anyone of the wholesale dealers to sign the agreement and to bind himself to sell at such prices as the manufacturer of the article should see fit to name as the selling price; the right to fix the price belonging to the manufacturer it was proper for the wholesaler to agree to recognize that right and govern himself accordingly. He had the right to insist that in consideration of his performing those conditions, in accordance with the wishes of the manufacturer, the latter should not give to other dealers the rebate provided for members of the association unless such dealer should agree to be bound by the same conditions the members of the association took upon themselves; and he had a right to agree that in order to secure the due carrying out of the agreement according to the spirit thereof he would furnish to the manufacturer such evidence as he might secure from time to time tending to show that members of the association were directly or indirectly violating its rules, and that which he could do alone, he and they could do as members of the association, provided *of course* their coming together did not operate aganst the rights of the general public, but as against other selling agents like themselves, no other public interest being affected, there could be no doubt of their right to agree with each other to do what any of them could do alone so long as the motive was proper. The members of the association not only had the right to inform the manufacturers about those members within it and the dealers without it who were violating the plans agreed upon, but they also had the right to take such legitimate and honorable means as were

within reach to ascertain what persons were violating the rules, and to give notice of it to all of the members of the association. But that course operated, says the plaintiff, in effect to deprive me of the opportunity of buying goods on terms as favorable as the defendant wholesale dealers bought them. True, but it may be answered that you *could* buy them on the *same* terms as the members of the association, which terms contain conditions governing the sale and the conduct of the members. Instead, you prefer to take the business chances to be found outside of the association, and, before the courts will help you, you must show that the plans of the association, or its conduct under those plans, are unlawful as against you," pp. 19, 20.

It will be noted that the court did not base its decision upon the theory that the goods involved in that case were proprietary articles, but, as was said by Judge Haight, the plan under consideration was one not confined to the sale of such goods, but was one that had been adopted by many manufacturers of merchandise and other goods, and the decision is recognized as largely affecting the plan of conducting business in other articles of commerce. This was also recognized in the dissenting opinion.

The case is particularly strong since there the plan of transacting business was originated not by the manufacturers, but by the wholesalers for the purpose of regulating the sale by them of articles of merchandise manufactured by the producer; while in the present case the owner of merchandise, for the purpose of protecting itself in exercising the right to sell goods upon such conditions only as would result in its protection, did with its own what it had a right to do, to-wit, sold its property upon conditions intended for its own protection.

The decisions of the Circuit Court of Appeals in the Eighth Circuit in *Whitewell* v. *Continental Tobacco Company, 125 Fed. Rep., 454,* and *Phillips* v. *Iola Co., 125 Fed. Rep., 593,* are also directly in point.

In the first of these cases, a manufacturing corporation and its employe restricted the sale of its products, to those who refrained from dealing in the commodities of its competitors, by fixing the prices of its goods to those, who did not thus refrain, so high that their purchase was unprofitable, while it reduced the prices to those who declined to deal in the wares of its competitors, so that the purchase of the goods was profitable to them. The plaintiff applied to purchase, but refused to refrain from handling the goods of the corporation's competitors, and sued it for damages caused by the refusal of the defendants to sell their commodities to him at prices which would make it profitable for him to buy them and sell them again. It was held that the restriction of their own trade by the defendants, to those purchasers who declined to deal in the goods of their competitors, was not violative of the anti-trust act, and that the owner of goods may dictate the prices at which he will sell them. In the course of his opinion, Judge Sanborn said:

"In the contract combination or conspiracy which is charged against the defendants in this case there is nothing of this character (that is, violative of the anti-trust law). The Tobacco Company is a manufacturer and trader, and McHie is its employe. Conceding, for the purpose of the argument, but not deciding, that there may be a contract, combination or conspiracy in restraint of trade between an employer and his employee, no such contract, combination or con-

spiracy between them can be a violation of this law unless it is in restraint of interstate commerce; and the only combination charged against the defendants is their combination to make sales of the commodities of the Tobacco Company profitable to purchasers to those persons only who refrain from dealing in the wares of their competitors. The two defendants in this case had never been and never intended to be competitors. There has never been any competition, actual or possible, between them, and hence no competition between them is or can be restrained by their combination to conduct the trade of Tobacco Company. The contract, combination or conspiracy charged against them did not restrict competition between them and the independent manufacturers or dealers, who, according to the company, were their competitors, because it left the latter free to select their purchasers and to fix the prices of their goods and the terms at which they would dispose of them to all intending purchasers. The Tobacco Company and its competitors were not dealing in articles of prime necessity, like corn and coal, nor were they rendering public or quasi public service, like railroad and gas corporations. Each of them, therefore, had the right to refuse to sell its commodities at any price. Each had the right to fix the prices at which it would dispose of them, and the terms upon which it would contract to sell them. Each of them had the right to determine with what persons it would make its contracts. There is nothing in the act of July 2, 1890, which deprived any of these competitors of these rights. If there had been, the law itself would have destroyed competition more effectually than any contracts or combinations of persons or of corporations could possibly have stifled it. * * * The Tobacco Company and its employee sold its products to customers who refrained from dealing in the goods of its competitors at prices which rendered their purchases profitable. But there was no restriction upon competition here, because this act left the rivals of the Tobacco Company

free to sell their competing commodities to all other purchasers than those who bought of the defendants, and free to compete for sale to the customers of the Tobacco Company by offering to them goods at lower prices or on better terms than they secured from that company. The Tobacco Company and its employee were not required, like competitors engaged in public or quasi-public service, to sell to all applicants who sought to buy, or to sell to all intending purchasers at the same prices. They had the right to select their customers, to sell and to refuse to sell to whomsoever they chose, and to fix different prices for sale of the same commodities to different persons. In the exercise of this right they selected those persons who would refrain from handling the goods of their competitors as their customers, by selling their products to them at lower prices than they offered them to others. There was nothing in this selection or in the means employed to effect it, that was either illegal or immoral."

In *Phillips v. Iola Portland Cement Company, 125 Fed. Rep., 593,* the same Court held that a contract of sale, by a manufacturer of some of its product, to be shipped across state lines to the latter, whereby the parties agree that the purchaser shall not sell, ship, or allow any of the product thus purchased to be shipped outside of a certain state, was not in restraint of trade or illegal under the act of July 2, 1890. Judge Sanborn said:

"This Act of Congress must have a reasonable construction. It was not its purpose to prohibit or to render illegal the ordinary contracts or combinations of manufacturers, merchants and traders, or the usual devices to which they resort to promote the success of their business, to enhance their trade, and to make their occupations gainful, so long as those combinations and devices do

not necessarily have a direct and substantial effect to restrict competition in commerce among the states. * * * The Iola Cement Company had no monopoly of the manufacture or sale of cement in the United States. It was surrounded by competing manufacturers, and the contract which it made with Parr & Co. of Galveston, had no direct or substantial effect upon competition in trade among the states. It left the manufacturers who were competing with the plaintiff for the trade of the country free to select their customers, to fix their prices, and to dictate their terms for the sales of the commodities they offered, so that in this regard no restraint whatever was imposed."

(*e*) *Further Adjudications on Contracts like that here involved.*

In *Garst* v. *Harris* (177 *Mass.*, 72) an action was brought to recover liquidated damages for breach of an agreement not to sell below a stipulated price a proprietary medicine purchased by the defendant of the plaintiff. It was held that the contract was not contrary to public policy. Chief Justice Holmes, now of United States Supreme Court, delivered the opinion, saying:

"It is said that the contract was unlawful, as in restraint of trade. Some limits were set to the inherited doctrine on this subject by the recent case of *Electric Co.* v. *Hawkes*, 171 *Mass.*, 101, as they had been in England before. When, as here, there is a secret composition, which the defendant presumably would have no chance to sell at a profit at all, but for the plaintiff's permission, a limit to the license, in the form of a restriction of the price at which he may sell, is proper enough. See *Machine Co.* v. *Morse*, 103 *Mass.*, 73; *Roller Co.* v. *Cushman*, 143 *Mass.*, 353; *Gloucester Isinglass &*

Glue Co. v. *Russia Cement Co.*, 154 *Mass.*, 92; *Fowle* v. *Park*, 131 *U. S.*, 88, 91; *Walsh* v. *Dwight*, 40 *App. Div. N. Y.*, 513."

In *Garst* v. *Charles*, 187 *Mass.*, 144, and *Sperry & Hutchinson Co.* v. *Mechanics' Clothing Co.*, 128 *Fed. Rep.*, 800, similar contracts were enforced; and the right to impose upon the sale of a railroad ticket the element of non-transferability was declared in *Bitterman* v. *Louisville & Nashville R. R. Co.*, 207 *U. S.*, 221.

Special attention is directed to the case of *Fowle* v. *Park* (*supra*), where this Court recognized the right of a manufacturer to limit the prices at which his product might be sold.

See also

Anderson v. *United States*, 171 *U. S.*, 674.
Continental Ins. Co. v. *Board of Fire Underwriters*, 67 *Fed. Rep.*, 310.
Matthews v. *Associated Press*, 136 *N. Y.*, 333, 340.

Contracts analogous to that now under consideration have been upheld in various jurisdictions.

Thus, in *Newell* v. *Meyendorff* (9 *Montana*, 264; 8 *L. R. A.*, 440) it was held that a contract giving a vendee an exclusive agency for the sale of a certain brand of cigars in Montana and providing that the vendors would not sell such cigars to any one else within that territory, and that the vendee should cease advertising and selling various other brands in which he had been dealing, was valid.

In *Meyer* v. *Estey* (164 *Mass.*, 457) a contract for the sale of electrotype plates under a stipulation that the buyer would not sell the plates to

other parties or multiply them for the purposes of sale, was declared to be enforceable.

In *Commonwealth* v. *Grinstead* (*Ky.* ; 56 *L. R. A.*, 709) an agreement between a manufacturer and the vendee of his product, in which the latter agreed not to sell below a minimum price, was pronounced as not in conflict with the Kentucky statute for the suppression of conspiracies and trusts. It was considered entirely lawful for a manufacturer to prevent his goods from being brought into competition with those of an inferior grade and refuse to sell to any one who would not agree to refrain from selling below the minimum price fixed by the manufacturer.

In *Crystal Ice Mfg. Co. v. Brewing Association* (8 *Tex. Civ. App.*, 1) a contract between an ice manufacturer and a trader, whereby the former agreed to sell the latter all the ice he needed and the trader agreed not to retail ice or to sell to retailers, was held to be valid.

In *Clark v. Frank* (17 *Mo. App.*, 602) a contract whereby a purchaser of thread in consideration of certain rebates in the price agreed to maintain a certain price in selling at retail the brand of goods sold to him, was decided not to be a contract in restraint of trade.

In *Keith v. Herschberg Optical Co.* (48 *Ark.*, 138) an agreement made by a drummer with a purchaser not to sell a certain kind of goods to any one else in the same town was considered to be valid.

In *Brown v. Rounsavall* (78 *Ill.*, 589) a contract to furnish a dealer with sewing machines at a discount and upon credit, on condition that the purchaser should deal exclusively in the machines sold by the vendor, was likewise upheld.

In *Roller v. Ott* (14 *Kan.*, 609) a contract between A and B that the former will not sell furniture in Ottawa to any person other than B was held to be valid.

See also

Fuqua v. Pabst Brew. Co., 36 *S. W. Rep.*, 479.
Barber Asphalt Co. v. Brand, 7 *N. Y. Supp.*, 744.

(*f*) *Decisions relied on by Defendant.*

An examination of the cases which have been cited to sustain the proposition that such a contract as the present is invalid will, on analysis, be found to differ most materially in their facts and circumstances. They either involve the formation of combinations between producers of or dealers in merchandise to limit the production or supply of an article, or they are cases in which a corporation of a quasi-public character, charged with a public duty, as for example a railway company, or a gas company, enters into a contract restrictive of its business, and which disables or hampers it from performing the duty which it owes to the public.

This distinction was recognized by the Supreme Court of Minnesota in *New York Benefit Co. v. Union Hospital Co.* (11 *L. R. A.*, 437, 440).

Without undertaking to comment on every case which has been or may be cited against us, it will be sufficient to advert to a few of the more prominent ones.

Central Ohio Salt Co. v. Guthrie (35 *Ohio St.*, 666) was a case of voluntary association of salt manufacturers who agreed among themselves to

regulate prices and the grading of their product and to prohibit the various members from selling salt except at prices fixed by the association. The action was not one to recover the price of salt sold to a third person, but related solely to the validity of the contract as between the original parties thereto.

Morris Run Coal Co. v. Barclay Coal Co. (68 *Pa. St.*, 173) was a case of a contract regulating the sale of coal between various producers and related to the validity of the contract regulating production as among the parties to the combination.

In *Cummings v. Union Blue Stone Co.* (164 *N. Y.*, 401) there was an agreement between the producers of practically all of the stone, known as Hudson River blue stone, which fixed the prices at which it was to be sold, apportioned the sales among the different members of the association, and in other respects regulated the conduct of the business. The action was for an accounting between the several members of the association.

Recognizing the principle laid down in *Hodge v. Sloan* (*supra*) the court distinguished that case, from the one then under consideration, by the circumstance that the latter related to a combination among many dealers to prevent competition among themselves, to control and limit production, and to increase and maintain prices.

In *Cohen v. Berlin & Jones Env. Co.* (166 *N. Y.*, 292) the agreement which was under consideration, was one between the manufacturers of eighty-five per cent. of the envelopes used in the country, and an outside manufacturer, which in effect made him a member of the combination, subjected him to the conditions of their contract, and made him a party to a scheme restricting him in the disposition of

his own product, and fixing the price at which his own manufactures might be disposed of. Neither his plant, nor good will was acquired by the combination, but he subjected his product to the control of the combined manufacturers.

Hence, the case was considered identical with that passed upon in *Cummings v. Union Bluestone Co.* (*supra*).

Nestor v. Continental Brewing Co. (161 *Pa. St.*, 473) was a case of an agreement between the brewers of Philadelphia and vicinity to regulate the price of beer and was an attempt to enforce that contract between the parties thereto.

People v. Sheldon (139 *N. Y.*, 251) was an indictment against the coal dealers of Lockport, who entered into a combination for the purpose of controlling the price and managing the sale of coal so as to prevent competition between the members of the organization.

Judd v. Harrington (139 *N. Y.*, 105) was an attempt to enforce as between the parties thereto an agreement tending to prevent competition among dealers in sheep and lambs in the City of New York by an action brought to recover liquidated damages against a member of the combination for a breach of his covenant.

The case principally relied upon by the defendants is *Arnot v. Pittston & Elmira Coal Co.* (68 *N. Y.*, 568). A careful examination of that case will, however, indicate that it involved a contract between producers.

The defendant and the Butler Colliery Company were engaged in mining coal near Pittston, Pennsylvania. The defendant had a coal depot at Elmira, which was the chief market for coal in Western New York, from which it supplied a large ex-

tent of territory North and West. For the purpose of monopolizing the trade and to maintain an unnaturally high price, the two companies entered into a contract, whereby the defendant agreed to take all the coal which the Butler Colliery Company should desire to send north of the State line, not exceeding two thousand tons per month, at the regular market price less a commission of fifteen per cent., and the Butler Colliery Company agreed not to sell coal to any party other than defendant, to come north of the State line. The product of the Butler Colliery Company largely exceeded two thousand tons per month. The Butler Company delivered coal and made advances under the contract, during the first month, and then refused to carry it out further, and the plaintiff, as the assignee of its claim under the contract, sued to recover the agreed price for the coal so delivered.

It was obvious that the Butler Colliery Company became a party to an unlawful scheme; that it as a producer entered into a contract with another producer whereby it prevented itself from competing with the latter within the limits of the State of New York, and by suing upon this contract the plaintiff was seeking to avail himself of its illegal provisions.

Judge Rapallo in the course of his opinion said (p. 565):

"It cannot escape observation that by this agreement the Butler Colliery Company did not agree to sell or deliver to the defendant all of the product of its mines, nor any specific quantity or proportion thereof. It was entirely optional with it whether or not to deliver any coal to the defend-

ant. But the defendant did agree to take all the coal which the Butler Company might desire to send north to the extent of two thousand tons per month. This undertaking would have been utterly void for want of mutuality had it not been for the agreement of the Butler Company *that it would not sell coal to any other party, to come north of the State line.* The only consideration for the agreement of the defendant to take of the product of the Butler Company to the extent of two thousand tons per month, consisted in the stipulation of that company not to sell to any one but the defendant. Without that stipulation, the paper called a contract would have amounted to nothing. Neither party would have been bound to deliver or accept any coal. That stipulation was all that gave vitality to the contract.

"Bearing in mind the fact found, that the product of the Butler Company's mines was largely in excess of two thousand tons per month, the object of the agreement is plain. The defendant, *without binding itself to take the whole product of the mines of the Butler Company,* endeavored by this agreement to keep all of the coal of that company out of the market, except the limited amount which it agreed to take, and thus to artificially enhance the price of that necessary commodity. This purpose was the basis of the whole agreement, and, as is found by the referee, was understood by both parties at the time of entering into the contract."

How different is the case here presented? The defendants were not producers of wall paper. They were jobbers in that article of merchandise. They were not limited as to the quantity of goods that they might sell. They bound themselves to purchase a certain quantity from the plaintiff in order to get certain discounts. They agreed that they would not sell the goods which they purchased from the plaintiff at a price less than that

specified in the contract. They were at liberty to manufacture and sell at any price and to any extent the product of their own manufacture. They were at liberty to purchase from other manufacturers and sell at any price. They were at liberty to purchase the goods dealt in by the plaintiff from any other dealer and dispose of them at any price that they might desire. Their agreement did not curtail production, or keep out of the market any commodity or artificially enhance prices.

This case would be like the *Arnot case* if the defendants had been manufacturers of wall paper, and had given an option to the plaintiff to purchase a portion only of their product, agreeing at the same time to keep all the remainder of their product out of the market. As it is, however, none of these elements exist in the contract between the plaintiff and the defendants.

Unckles v. *Colgate* (148 *N. Y.*, 29, 538), was an attempt by a party to an unlawful trust agreement to require his associates to account to him.

Bishop v. *American Preservers Co.* (157 *Ill.*, 284), was likewise a case between parties who formed an unlawful trust.

Pullman Car Company v. *Transportation Company* (139 *U. S.*, 2), is not an authority against the plaintiff. There, a corporation undertook to transfer all of its property and assets, including patents, moneys, credits and rights of action, for a term of ninety-nine years, and covenanted not to engage in the business of manufacturing, using or hiring sleeping cars while the contract should remain in force. The contract was held to be void because beyond the corporate powers of the lessor, and because it involved an abandonment of its

duty to the public; and consequently no action could be maintained by the lessor.

Incidentally it was also suggested that the contract was in restraint of trade, but the Court did not base its decision upon that theory. At all events there was an attempt to recover upon a contract which was in all of its essential features unlawful.

McMullen v. *Homan* (174 *U. S.*, 639) is much relied upon by the defendants, but it will be seen that in that case, the plaintiff and the defendant entered into a fraudulent contract for the construction of a public work in the City of Portland, Oregon, which involved the suppression of competition, between the parties to the contract sought to be enforced, the presentation of fraudulent bids, and the enhancement of the prices of the work to be performed. One of the parties to this illegal agreement, sought an accounting of the profits made by his associate in villainy, out of the work performed under the contract, procured by these fraudulent means.

It is impossible to see how the Court could have done otherwise, than to hold, that it could not lend its assistance in any way toward carrying out the terms of that illegal contract. It was a proper case for the application of the principle *ex turpi causa non oritur actio,* and the position of the litigants was aptly likened by the Court, to that of two highwaymen who applied to a court of equity to administer the division of their spoils.

It is difficult to understand the relevancy of this authority, to a case, where a dealer in a lawful commodity, sells his merchandise at a price agreed to be paid by a purchaser, and upon conditions which will protect him from acts of the purchaser tending to injure him.

Defendant has referred to *Montague & Co.* v. *Lowry*, 193 *U. S.*, 38 and *Northern Securities Company* v. *United States*, 193 *U. S.*, 197.

Neither of these cases has any application to the case now under consideration. In neither of them was the doctrine laid down in *Connolly* v. *Union Sewer Pipe Company*, 184 *U. S.*, 540, modified or qualified to the slightest extent. In neither of them was there an attempt on the part of one dealing with an alleged trust to avoid payment for merchandise purchased, as in the present case.

Neither did these cases involve the question of the validity of a provision, in a contract of sale, intended for the protection of the vendor, such as that now considered. In both cases, the question involved, was, whether or not the organization sought to be attacked violated the Anti-Trust Act of July 2nd, 1890, and whether or not the statutory relief provided in such act, was enforceable.

Consolly v. *Union Sewer Pipe Company* decided that the anti-trust act does not constitute a defence or counterclaim, which the defendant can make use of in the present form of action, brought to recover for goods sold and delivered, and that doctrine is in no wise weakened by the cases referred to.

In *Montague* v. *Lowry* (*supra*), the defendants constituted an association of manufacturers and dealers in tiles, mantels and grates. By the terms of the organization the dealers agreed not to purchase materials from manufacturers who were not members, and not to sell unset tiles to any one other than members for less than list prices, which were fifty per cent higher than the prices to members, and the manufacturers agreed not to sell to any one other than members. The plaintiff sued

this association, under the provisions of section 7 of the Anti-Trust Law, to recover treble damages for the injury resulting from the existence of this organization. It was held, that the combination was violative of the statute, being in restraint of inter-state trade and commerce, and that the parties aggrieved, were therefore, entitled under the statute to recover threefold the damages found by the jury.

That case presents no parallel to the present. If the defendant, The Lewis Voight & Sons Company, had been refused goods by the plaintiff, the Continental Wall Paper Company, and had been prevented from purchasing them from it and had thereby sustained damage, an action brought by The Lewis Voight & Sons Company against the Continental Wall Paper Company to recover such damages might have presented a similar situation. But the Continental Wall Paper Company did not refuse to sell to the defendant. The defendant was not deprived of the opportunity of purchasing goods. It in fact purchased all the goods that it desired, but now refuses to pay for them.

Neither is there any parallel, between the provisions of the Constitution and By-Laws of the association in question, and the provisions in the contract of sale, under which the defendant purchased its goods from the plaintiff. In the Montague case, the dealers agreed not to purchase materials from manufacturers, who were not members, and agreed not to sell tiles to any one other than members for less than the list prices, which were fifty per cent higher than the prices to members. This imposed a restraint upon trade. The dealers were not permitted to sell to any one other than members, except on terms which deprived

them of an opportunity of selling at a reasonable profit. Whereas the contract under which the defendant purchased from the plaintiff, did not prohibit it from selling at the same prices at which it had purchased, to anybody. It was merely prohibited from selling the goods, which it had purchased from the plaintiff, at a price lower than the list prices at which it had purchased. It did not require the defendant to purchase only from the plaintiff, but the defendant had the right to purchase from anybody, and to sell to anybody any goods which it might acquire, from any other person, even though they might have been purchased originally from the Continental Wall Paper Company, at any price that the defendant desired.

The case of *Northern Securities Company* v. *United States* (*supra*) merely decided, that an attempt on the part of the Northern Securities Company, to acquire a majority of the stock of the Northern Pacific Railroad Company and of the Great Northern Railroad Company, two competing railroads, constituted such an illegal combination, as to fall within the prohibitions and provisions of the act of July 2, 1890, and that it was within the power of the Circuit Court, in an action brought by the Attorney General of the United States, to enjoin the Northern Securities Company, from voting the stock and exercising any control over the acts and doings of the railroad companies.

Four of the justices of this Court, namely, Chief Justice Fuller and Justices White, Peckham and Holmes, dissented from this decision, and Mr. Justice Brewer united in it, solely on the ground that the union of ownership in the Northern Securities Company of the majority of the

stock of these two railroad companies was an unreasonable combination in restraint of trade. He however held, and in that respect concurred with the dissenting judges in *United States v. Joint Traffic Association* and *United States* v. *Trans-Missouri Company,* that the act of July 2, 1890, was leveled, as appears, by its title, only at unlawful restraints and monopolies, and that Congress did not intend, to reach and destroy those minor contracts, in partial restraint of trade, which the long course of decisions at common law had affirmed were *reasonable,* and ought to be upheld.

Attention is also called to the more recent decision by this Court in *Minnesota v. The Northern Securities Company,* in which it was held that the State of Minnesota could have no relief, as against a combination, formed in violation of the anti-trust law, but that the right to maintain an action of the character involved in that litigation, was vested solely in the United States Government, or in one who suffered special injury of the nature indicated in Section 7 of the act.

Inasmuch as the present action does not come within the purview of Section 7, it necessarily follows, that the defendant cannot defeat the plaintiff's recovery on the theory that there has been a violation of the Anti-Trust Law, which violation, we deny.

It has also been argued by the defendants that the contract was invalid because the defendants were practically prevented from obtaining goods from the plaintiff except on condition that they would enter into such a contract. But, even if this were so, that would not invalidate the agreement. As is said in *Cooley on Torts* (*p. 278*):

"It is a part of every man's civil rights that he be left at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason or is the result of whim, caprice, prejudice or malice. With his reasons neither the public nor third persons have any legal concern."

Again, at p. 688, he says:

"The exercise by one of his legal rights cannot be a legal wrong to another. * * * Whatever one has the right to do another can have no right to complain of."

This principle was applied in *Worcester v. Miller, (41 S. W. Rep., 301)* by the Court of Appeals of Kentucky, where the articles of agreement of a funeral directors' association provided that the members were not to render services for or furnish burial materials to any person who fails or refuses to discharge an existing indebtedness to any member of the association. This clause was held not to be unlawful.

Throughout this argument we have assumed, but not conceded, that the plaintiff was organized for the purpose of monopolizing the wall paper industry. But even on that asumption, in view of the decision in *Connolly v. Union Sewer Pipe Co. (supra)* it cannot be successfully contended that the plaintiff would be thereby precluded from recovering the price of merchandise sold by it to the defendants. Such a result is only possible, if the contract between the plaintiff and the defendants, is in itself invalid, by reason of some independent provision, which is in restraint of trade.

It has been our purpose under this Point to demonstrate that the contract between the parties to this action contains no element of illegality.

For the purpose of evading the force of the authorities and of the principles relied upon by the plaintiff the defendant seeks to differentiate this case from those considered by urging that the defendant was a member of the alleged trust of the manufacturers of wall paper and that, therefore, the case comes within the rule which precludes one member of an unlawful combination from enforcing the illegal contract against another member thereof.

(*f*) *The facts alleged in the answer do not take this case out of the purview of the decision in Connolly* v. *Union Sewer Pipe Company* (*184 U. S., 540*), *since they clearly allege that the defendant was not a member of the trust, but the victim of the trust.*

The analysis of the third defence, set forth in the answer, which is contained in the Statement of Facts, preceding these Points, fully sustains the proposition.

If any allegation, that the defendant was a member of the trust or combination therein described, can be tortured out of the language employed, it can only be by way of conclusion and epithet. But, as has been said by Chief Justice Fuller in *Kent* v. *Lake Superior Canal Co., 144 U. S., 91*:

"Epithets do not make out fraud, and averments substantially of legal conclusions are not admitted by a demurrer."

To the same effect are:

National Protective Assn. v. *Cumming, 170 N. Y., 315.*

There is not a fact or circumstance alleged in the answer, which indicates that the defendant was a member of the combination or trust. Every allegation of the answer excludes the defendant as a member of the combination. Those who constituted the combination are referred to over and over again. Nowhere is the defendant referred to as a constituent part of such combination. On the contrary, it is the defendant against whom it is claimed that the evil purposes of the combination are directed. It is the defendant who is to be coerced, compelled, threatened. It is the defendant to whom the combination sells its product at enhanced prices and which is sought to be immolated by the trust.

It is something unheard of in the law, that the victim is in the same category as the unlawful conspirator; that the person prosecuted is *particeps criminis* with the prosecutor; that the party compelled to purchase at an enhanced price is in the same plight as the vendor.

If the members of the so-called combination referred to in the answer, and the defendant, had been jointly indicted as guilty of a conspiracy, in violation of the Sherman anti-trust law, could it be claimed for a moment, that the defendant, on the facts set forth in the answer, could be charged with complicity and be considered in legal contemplation as a member of an unlawful trust? Certainly not. Or, if the defendants had been charged, by an indictment containing the allegations of the third defence of the answer in the present case, with the commission of a penal of-

fence, would there be the slightest hesitation, in sustaining a demurrer to the indictment, if interposed? We believe not. And if these allegations would not charge the defendants with responsibility, as members of a trust. in a criminal proceeding, how can it be claimed, that where the question arises in a civil action, as to what constitutes membership in a trust, a different rule is applicable, than that which applies in a criminal proceeding?

Referring to the fourth and fifth defences, in which the defendant seeks to counterclaim for the damages sustained by it as the victim of the trust, it is clear that the defendant does not pretend that it was in any sense a member thereof, for it seeks to recover the damages which it sustained, as a result of the pretended illegal machinations of the trust against it (*Rec., pp. 411 to 414*).

Turning to the interrogatories, it is indicated that the whole theory of the defence is, that the plaintiff was a trust, and the defendant its victim (*Rec., pp. 415 to 419*).

The case is in every respect the same as *Connolly* v. *Union Sewer Pipe Company.* It could have been urged in that case, with exactly the same force as here, that Connolly and Dee were members of the combination, because they had entered into a written contract with it, and had agreed on a schedule of prices, at which they were to sell the goods, which they had acquired from the so-called trust. Yet, as has been seen, it was decided in that case, that conceding that the Union Sewer Pipe Company was a trust, and that it violated the provisions of the anti-trust act, and of the laws of Illinois, those facts did not debar a recovery on a contract, whereby the trust sold

merchandise, on terms, almost identical with those set forth in the defendant's answer.

The effect of the defendant's contention is, that if it is shown that a trust sells its goods only on condition, that the purchasers from it enter into a written contract fixing the terms of the purchase, *ipso facto* every person who deals with a trust and with its customers becomes a member of the trust, and consequently, that the ultimate consumer would be enabled to confiscate the property of a monopoly, or dealer, who is charged to be a member of such trust.

The opinion of this Court in the Connolly case was undoubtedly intended to avoid such consequences. It was believed that the legislation of Congress, and of the several states, provided adequate remedies for the punishment of those who undertook to monopolize an article of commerce, without providing a method, whereby a dishonest purchaser from the so-called trust, might deliberately plan to acquire its property, and then proceed to confiscate it, on the theory that the vendor had incurred a penalty for a violation of the law.

So anxious is the defendant to occupy this ungracious position, that it is even willing to befoul its own nest, and to proclaim its own iniquity, by urging that it has committed a crime, of which it is in fact innocent. It is believed that the courts will not aid the defendant in its attempt to appropriate the plaintiff's property, by this method, but that they will hold, that if any wrong has been done the defendant, it will be required to proceed according to such methods, as are provided for its relief.

(g) If the covenant now under consideration, was in restraint of trade, it was only incidentally and indirectly so, and being merely ancillary to a valid contract of sale, and reasonable at common law, does not come within the purview of the Sherman Act.

In *United States* v. *Freight Association, 166 U. S., 290,* and *United States* v. *Joint Traffic Association, 171 U. S., 505,* the element of restraint of trade entered directly into the contracts, and being thus violative of the Sherman Act, it was decided by a majority of the Court, Chief Justice Fuller and Justices Harlan, Brewer, Brown and Peckham, that the reasonableness of the restraint was immaterial. From this conclusion, Justices White, Field, Gray and Shiras dissented, principally upon the ground, that the act did not prohibit a contract in reasonable restraint of trade, even though it directly operated in restraint of interstate commerce.

In *United States* v. *Joint Traffic Association, 171 U. S., 568,* Mr. Justice Peckham clearly stated the distinction for which we contend:

"In *Hopkins* v. *United States,* decided at this term (*171 U. S., 578*), we say that the statute applies only to those contracts whose *direct* and *immediate* effect is a restrain upon interstate commerce, and that to treat the act as condemning all agreements under which, as a result, the cost of conducting an interstate commercial business may be increased, would enlarge the application of the act far beyond the fair meaning of the language used. *The effect upon interstate commerce must not be indirect or incidental only.* An agreement entered into for the purpose of promoting the legitimate business of an individual or corporation, with no purpose to thereby affect

or restrain interstate commerce, *and which does not directly restrain such commerce*, is not, as we think, covered by the act, although the agreement may indirectly and remotely affect that commerce. We also repeat what is said in the case above cited, that 'the act of Congress must have a reasonable construction, or else there would scarcely be an agreement or contract among business men that could not be said to have, indirectly or remotely, some bearing upon interstate commerce, and possibly to restrain it.' To suppose, as is assumed by counsel, that the effect of the decision in the Trans-Missouri case is to render illegal most business contracts or combinations, however indispensable and necessary they may be, because, as they assert, they all restrain trade in some remote and indirect degree, is to make a most violent assumption and one not called for or justified by the decision mentioned, or by any other decision of this Court."

The opinion of Judge Taft in *United States* v. *Addyston Pipe & Steel Company, 85 Fed., 271*, as shown (*supra*), recognizes the rule for which we contend, the opinion in this Court (175 U. S., 211) is based on the theory that the contracts involved restrained trade, not incidentally, or collectively, but as a direct and immediate result of the combination formed by the defendants.

In *Northern Securities Co.* v. *United States, 193 U. S., 360*, the transaction under consideration was held, by Justices Harlan, Brown, McKenna and Day, to be a combination either in the form of a trust, or in restraint of interstate commerce, brought about by an agreement whose direct effect was, to prevent competition and to restrain trade and commerce.

Chief Justice Fuller and Justices White, Peckham and Holmes dissented from this conclusion,

in the result of which Mr. Justice Brewer concurred, in language indicating his concurrence in the proposition now under discussion for he said:

"First, let me say that while I was with the majority of the court in the decision in *United States* v. *Freight Association, 166 U. S., 290,* followed by the cases of *United States* v. *Joint Traffic Association, 171 U. S., 505; Addyston Pipe & Steel Company* v. *United States, 175 U. S., 211, and Mantague & Co.* v. *Lowry, 193 U. S., 38,* decided at the present term, and while a further examination (which has been induced by the able and exhaustive arguments of counsel in the present case) has not disturbed the conviction that those cases were rightly decided, I think that in some respects the reasons given for the judgments cannot be sustained. Instead of holding that the Anti-Trust Act included all contracts, reasonable or unreasonable, in restraint of interstate trade, the ruling should have been that the contracts there presented were unreasonable restraints of interstate trade, and as such within the scope of the act. That act, as appears from its title, was leveled at only 'unlawful restraint and monopolies.' *Congress did not intend to reach and destroy those minor contracts in partial restraint of trade which the long course of decisions at common law had affirmed were reasonable and ought to be upheld. The purpose rather was to place a statutory prohibition with prescribed penalties and remedies upon those contracts which were in direct restraint of trade, unreasonable and against public policy."*

In *Cincinnati Packet Co. v. Bay, 200 U. S., 179,* the question of the extent to which the Sherman Act was applicable to covenants indirectly in restraint of trade, and as ancillary to a valid contract of sale, was involved. Mr. Justice Holmes said:

"It is argued, to be sure, that the last mentioned covenant (a covenant not to engage in a certain business for a specified period) is independent and not connected with the sale of the vessels. The contrary is manifest as a matter of good sense, and is proven even technically by the words 'it is also agreed as a part of the consideration of this agreement.' By these words the covenant not to do business between Cincinnati and Portsmouth for five years is imported into the sale of the ships, and made one of the conventional inducements of the purchase. The price is paid not for the vessels alone, but for the vessels with the covenant. So, still more clearly, the parallel instalments for five years are paid for the covenant, at least in part. It is said that there is no sale of good will. But the covenant makes the sale. Presumably all that there was to sell, beside certain instruments of competition, was the competition itself, and the purchasers did not want the vendors' names.

"This being our view of the covenant in question, whatever differences of opinion there may have been with regard to the scope of the act of July 2, 1890, there has been no intimation from any one, we believe, that such a contract, made as part of the sale of a business and not as a device to control commerce, would fall within the act. On the contrary, it has been suggested repeatedly that such a contract is not within the letter or spirit of the statute, *United States v. Trans-Missouri Freight Association, 166 U. S., 290, 329; United States v. Joint Traffic Association, 171 U. S., 505, 568*, and it was so decided in the case of a patent. *Bement v. National Harrow Co., 186 U. S., 70, 92.* It would accomplish no public purpose, but simply would provide a loophole of escape to persons inclined to elude performance of their undertakings, if the sale of a business and temporary withdrawal of the seller necessary in order to give the sale effect were to be declared illegal in every case where a nice scrutiny could

discover that the covenant possibly might reach beyond the state line. We are of opinion that the agreement before us is not made illegal by either of the provisions thus far discussed."

In an article entitled "The Sherman Law and Contracts in Restraint of Trade," which appeared in the *April, 1908*, number of *The Green Bag*, the writer pertinently says, at page 193:

"Recalling the distinction at common law between ancillary contracts in restraint of trade, such as that protecting the vendee of a business with its good will, and those having for their chief or only purpose a regulation of trade; one of the most logical of the arguments advanced to convince the courts that the Anti-trust Act was to be construed to be aimed only at reasonable restraints of trade, was this: Congress intended to pass a reasonable law; the law would be unreasonable if it made illegal and criminal such ancillary contracts in restraint of trade; therefore, Congress did not intend to include all contracts in restraint of trade within the condemnation of the Act. The Supreme Court has never questioned the truth of the premises of this argument, and has negatived its conclusion only when sought to be too broadly applied. The court has never tried to escape the conclusion that so far as ancillary or collateral contracts in restraint of trade are concerned, the Congress did intend to exclude some restraints of trade from the operation of the statute."

After referring to the authorities just considered, the writer continues:

"By this construction there is excluded from the operation of the statute, in its entirety, the class of contracts which were the subject of practically all of the contested cases at common law.

It seems, then, that the effect of the statute is to illegalize but one class of contracts which were valid at common law; for if the contract were chiefly and directly to regulate and restrain trade, the common law would pronounce it invalid, if unreasonable, and valid, if reasonable, while the statute would invariably pronounce it illegal as directly restraining trade; and if the restraining covenant were collateral to a principal legal contract, then the common law might either pronounce it reasonable and valid, or unreasonable and invalid, but the statute does not apply at all, because it only incidentally and indirectly restrains trade. The contingency covered by the statute and not by the common law is the possible case where a contract directly and chiefly for the regulation and restraint of trade might be held at common law valid because reasonable. Such holding is impossible under the statute."

IV.

Even assuming, that the clause contained in the contract between the plaintiff and the defendants, which prohibited the latter from selling any of the merchandise, purchased from the former, at lower prices than those specified in the schedule annexed, was illegal, the only effect of such illegality would be, to nullify that provision, and not to prevent the plaintiff from recovering for merchandise actually received and kept by the defendants.

As early as in *Pigot's case,* 11 *Coke Rep.,* 27b, decided in 1615, it was held that if some of the covenants of an indenture, or of the conditions endorsed upon a bond, are against law, and some are good and lawful, the covenants or conditions which are against law, are void *ab initio,* and the others stand good.

This principle has never been departed from, and has been the subject of manifold applications, and qualifications, which are nowhere more clearly stated than in *Hammon on Contracts,* § 251, *et seq.,* where the author says:

"Illegality may affect the whole or only a part of an agreement, and the legal part may or may not be severable from the illegal. Generally speaking, if the agreement is indivisible, partial illegality vitiates the whole transaction; but if the agreement is divisible, so that there is a complete right out-

side of what is illegal, the agreement is void only *pro tanto,* and not wholly nugatory. The question whether a contract is entire or severable is to be determined by considering both the language and the subject matter of the contract. The rule that the bad may be rejected, if separable, and the good retained, holds *whether the illegality exists by statute or by common law.*"

Anson on Contracts (*8th ed.*), 206.
Pickering v. Ilfracombe Ry. Co., L. R., 3 *C. P.,* 235, 250.
United States v. Bradley, 10 *Peters,* 343.
Hynds v. Hays, 25 *Ind.,* 31.

"On the other hand, if the bad is not separable, the entire agreement falls, regardless of the source of the law defining the illegality.

"In considering the effect of partial illegality of consideration, we may regard an agreement as taking on one of four forms. It may consist in (1) one promise given upon one consideration; (2) one promise given upon several considerations; (3) several promises given upon one consideration; or (4) several promises given upon several considerations.

* * * * * *

"(3) If an agreement consist of several promises, based upon one consideration, the illegality of the consideration vitiates all the promises. However, and this is important, if the consideration is valid, the illegality of one or more of the promises will not avoid the rest, provided that those which are otherwise valid are severable from the others.

Kerrison v. Cole, 8 *East,* 231.
Gelpcke v. City of Dubuque, 1 *Wall.,* 221.
Gaskell v. King, 11 *East,* 165.

Erie Ry. Co. v. Union Locomotive & Exp. Co., 35 *N. J. Law*, 240.
Baines v. Gearey, 35 *Ch. Div.*, 154.
Wallis v. Day, 2 *Mees. & W.*, 273.
Haynes v. Doman, *L. R.* (1899), 2 *Ch.*, 13.
Oregon Navigation Co. v. Winsor, 20 *Wall.*, 64.
Western U. T. Co. v. Burlington & S. W. Ry. Co., 11 *Fed. Rep.*, 1.
Presbury v. Fisher, 18 *Mo.*, 50.

"Ordinarily a contract is severable where the price is expressly apportioned by the contract, or the apportionment may be applied by law to each item to be performed.

Moore v. Bonnet, 40 *Cal.*, 251.

"A promise in the alternative, one branch of which is lawful, and the other unlawful, is enforceable as to the lawful alternative.

Hanauer v. Gray, 25 *Ark.*, 350.

"Thus, taking an agreement in restraint of trade, as an illustration, if the restraint is applied in the agreement to a reasonable space, and also extended to an unreasonable space, the agreement is divisible and may be enforced as to the reasonable restraint.

Price v. Green, 16 *Mees. & W.*, 346.
Wiley v. Baumgardner, 97 *Ind.*, 66.
Dean v. Emerson, 102 *Mass.*, 480.
Peltz v. Eichele, 62 *Mo.*, 171.
U. S. v. Bradley, 10 *Pet.*, 343, 360, 364.
Trenton Potteries Co. v. Oliphant, 58 *N. J. Eq.*, 507; *s. c.*, 46 *L. R. A.*, 255.
Thomas v. Miles, 3 *Ohio St.*, 274.
Smith's Appeal, 113 *Pa.*, 579.

"Care must be taken not to confound this rule with the one just considered, namely, that where

one of two considerations is illegal, and the other legal, the illegality of the one avoids the promise founded on both. In the case now under discussion there is one lawful consideration to support two promises, one legal, the other illegal, that are separable.

* * * * * * *

"The result of the rules that partial illegality of consideration vitiates a promise founded thereon, and that the illegality of one of several separable promises, based upon the same consideration, does not affect the validity of the others, is to make the validity of an agreement consisting of mutual promises depend upon which party seeks to enforce it. Thus A promises B $100 in consideration of B's promise to do two acts, one of which is lawful and the other unlawful. A may come into court and enforce the lawful one of B's promises. B, however, cannot enforce A's promise, because it is founded on a consideration which is in part illegal.

Bishop v. Palmer, 146 *Mass.,* 468.
Wald, Pollock on Contracts, 321, *note.*
King v. King, 63 *Ohio St.,* 363; *s. c.,*
52 *L. R. A.,* 157.

"(4) In case an agreement is divisible into several promises based upon several considerations, the illegality of one or more of the considerations could not avoid all the promises if those which were made upon legal considerations are severable from the others.

Leavitt v. Palmer, 3 *N. Y.,* 19, 37."

Without undertaking to review the multitude of precedents, which present themselves, the citation of a few of the more important will suffice, by way of illustration, and as indicating the recognition by this court, of the doctrine to which we have ap-

pealed, as a protection against possible confiscation.

In *Cincinnati Packet Co.* v. *Bay, 200 U. S., 179, 185,* an action was brought on a contract to recover an installment of money due on the sale of a number of steamers, barges, coal flats and other property. The vendor agreed that for a period of five years he would not engage in any freight or passenger packet business, between Cincinnati and Portsmouth, Ohio, and intermediate points, nor at points between Syracuse and Portsmouth, Ohio, to or for points *below* Portsmouth, Ohio, with a qualification as to the towing and barge business, so long as it did not interfere with the vendee's freight and passenger business, from Portsmouth to Cincinnati. The contract contained the further provision:

"It is also understood in this agreement that the party of the second part will maintain the rates charged by the parties of the first part on business *above* Portsmouth, Ohio, said rates, however, never to exceed railroad rates between said points."

This covenant was relied upon, to make the contract illegal, as in restraint of trade, and to absolve the purchaser from the payment of the contract price. Mr. Justice Holmes disposed of this objection by saying:

"It only remains to say a word as to the agreement to maintain rates. This is a covenant by the purchaser, the plaintiff in error. It is not the covenant sued upon. It is not declared to enter into the consideration of the sale. If necessary, we should be astute to avoid allowing a party to escape from his just and substantially legal undertaking on such ground. The argument on the other

side requires us to import a subordinate undertaking of the buyer into consideration for that which was the consideration of his debt, and in that roundabout way to make the debt unlawful. We should not go into such niceties beyond noticing that they are not encouraged by the cases. *Oregon Steam Navigation Co.* v. *Winsor, 20 Wall., 64; Bank of Australasia* v. *Breillat, 6 Moore, P. C., 152, 201; Pigot's Case, 11 Co. Rep., 26b, 27b.*"

In *Oregon Steam Navigation Co. v. Winsor* (20 *Wall.*, 64), which has already been considered, the Oregon Company secured from Winsor a covenant that he would not use the steamer which he purchased for navigating the waters of California for a period of ten years from 1867, although the Oregon Company was under covenant to the California Company which restricted it from navigating to California waters for ten years from 1864 only. Consequently it was claimed that the covenant exacted from the defendant for a period of three years in excess of that for which the Oregon Company was bound avoided the entire covenant. This contention was, however, rejected by the Supreme Court, it being held that the covenant was so divisible in regard to the California portion that it could stand for the seven years for which the Oregon Company was bound to protect the California Company, even though it was void as to the remaining three.

Dealing with this feature of the case, Mr. Justice Bradley said:

"It is laid down by *Chitty* as a result of the cases, and his authorities support the statement, 'that agreements in restraint of trade, whether under seal or not, are divisible; and, accordingly, it has been held that when such an agreement contains a stipulation which is capable of being con-

strued divisibly, and one part thereof is void as being in restraint of trade, whilst the other is not, the Court will give effect to the later and will not hold the agreement to be void altogether.' * * * We see no reason why this principle should not be followed in the present case. The line of division between the period which is properly covered by the restriction and that which is not so is clearly defined and easily drawn."

In *United States* v. *Bradley, 10 Peters, 360,* Mr. Justice Story said:

"That bonds and other deeds may, in many cases, be good in part, and void for the residue, where the residue is founded on illegality, but not *malum in se,* is a doctrine well founded in the common law, and has been recognized from a very early period."

After citing Pigot's Case, he adds:

"And, notwithstanding the decision in Lee *v.* Colshill, Cro. Eliz., 529, which, however, is distinguishable, being founded on a statute, the doctrine has been maintained, and is settled law at the present day, in all cases where the different covenants or conditions are severable, and independent of each other, and do not import *malum in se,* as will abundantly appear from the case of Newman *v.* Newman, 4 M. & Selw., 66, and the other cases hereafter stated; and many more might be added. * * * Upon the whole, upon this point, we are of opinion, that there is no solid distinction, in cases of this sort, between bonds, and other deeds containing conditions covenants or grants, not *malum in se,* but illegal at the common law, and those containing conditions, covenants or grants, illegal by the express prohibition of statutes. In each case, the bonds or other deeds are void as to such conditions, covenants or grants, which are illegal; and are

good as to all others, which are legal and unceptionable in their purport. The only exception is, when the statute has not confined its prohibitions to the illegal conditions, covenants or grants; but has expressly or by necessary implication, avoided the whole instrument to all intents and purposes."

To the same effect is the language of Mr. Justice Swayne, in *Gelpcke* v. *City of Dubuque, 1 Wall., 222.*

In *Mallan* v. *May, 11 M. & W. 262,* two physicians entered into a contract wherein the defendant agreed not to practice his profession in London or in certain other named towns. He was sued for breach of contract because he practiced both in London and the other towns named, during the stipulated period. The defendant contended, that since the covenant not to practice in the other named towns was invalid, as a restraint of trade, although the agreement to practice in London was valid, the whole contract was void and neither promise could be enforced. It was, however, held that the plaintiff had a good cause of action for the defendant's breach of the valid stipulation.

In *Green* v. *Price, 13 M. & W., 695; 16 M. & W., 346*; a deed recited that A and B had carried on business as perfumers in copartnership, and that it had been agreed between them that B, in consideration of £2100, should assign to A his moiety of the good-will, stock and property of the copartnership. B, in consideration thereof, covenanted that he would not at any time during his life, carry on the trade of a perfumer, within the cities of London and Westminster, or within the distance of 600 miles from the same respectively; and for the observance of this covenant he bound

himself in the sum of £500 by way of liquidated damages. In an action brought for breach of the contract, the covenant was held to be divisible and good so far as it related to the cities of London and Westminster, though void as to the remainder of its provisions, and that A was entitled to recover in respect to the breach of the covenant occasioned by the defendant's carrying on trade in the city of London the whole sum of £5000.

Both of these cases were cited approvingly, in *Bishop* v. *Palmer, 146 Mass., 469.* There, however, plaintiff's action was for damages on account of the defendant's breach of a contract, wherein plaintiff had agreed, for a certain amount, to sell to the defendant his business, and had bound himself in the same contract not to enter or engage therein, anywhere, for a period of five years. The Court held, that as the latter provision of the contract was an agreement against public policy, the plaintiff could not enforce the promise of the defendant to buy, and had no right of action against him for a breach of the agreement; but it was practically conceded, that if the defendant had been willing to perform the contract, and had sued the plaintiff for its breach, he might have recovered on the promise of the plaintiff which was valid, waiving that which was invalid, Mr. Justice Allen saying:

"The plaintiff further suggests that, if the defendants were to sue him on this contract, they could clearly, so far as the question of legality is concerned, maintain an action upon all its parts, except, possibly, the single covenant in question. This may be so. If they pay to the plaintiff the whole sum called for by the terms of the contract, it may well be that they can call on him to per-

form all of his agreement, except such as are unlawful. In such case, they would merely waive or forego a part of what they were to receive, and recover or enforce the rest."

See also

Hanley v. *Donaldson, 182 Mass., 68.*

In *Western Union Telegraph Co.* v. *Burlington & Southwestern Ry. Co.* (11 *Fed. Rep.,* 1) a contract was entered into between the parties, for the construction and operation of a telegraph line upon the railway company's right of way, and regulating the rights of the railway company and the telegraph company, with regard to such line, with which the purchaser at the foreclosure sale of the railway property sought to interfere. A suit was brought to enjoin the purchaser from preventing the telegraph company from using the line, in accordance with the terms of the contract.

Among other clauses contained in the contract, was one, which gave to the telegraph company the exclusive right of way on and along the line of the railway, for the construction and use of such telegraph lines for commercial and public purposes, and whereby the railway company agreed that it would not transport any material for the construction of a line of telegraph, in competition with the line of the plaintiff, except at certain rates, nor stop its trains, nor distribute material for such parties, or their employees, at other than regular stations. This covenant was held to be void as in restraint of trade and contrary to public policy, as well as in contravention of an act of Congress.

It was nevertheless held, that this void provision did not invalidate the entire contract, and justify

the court in withholding the equitable relief, for which the plaintiff prayed. Judge McCrary said:

"We are, however, inclined to the opinion that the invalidity of this provision of the contract does not render the entire agreement null and void. The contract embraces several distinct promises on the part of the railroad company, besides the one respecting the exclusive right of way; as, for example, (1) that it will furnish and distribute the poles; (2) that it will furnish laborers to erect the line; (3) that it will maintain the poles in good order and keep the wires in good repair; (4) that it will furnish office room at its railway stations; (5) that the telegraph company shall control the commercial telegraphing along the line, and receive the proceeds thereof; and numerous other engagements of like character. The considerations for these promises, and for the additional legal promise concerning the exclusive right of way, was certain promises on the part of the telegraph company, all of which are legal. It is, therefore, a case in which the railroad company makes a number of promises to the telegraph company, one of which promises is illegal, but all the others legal, in consideration of certain promises on the part of the telegraph company, all of which are legal. The rule respecting such a contract is thus stated in Smith, Leading Cas. Hare & Wall, notes, 5th Am. Ed., 502; 'In cases where the consideration is tainted by no illegality, but some of the promises are illegal, the illegality of those which are bad does not communicate itself to or contaminate those which are good, except where, in consequence of some peculiarity in the contract, its parts are inseparable or dependent upon one another.' "

In a note to this case by the late Francis Wharton, that learned writer says:

"Assuming, however, the invalidity of this special stipulation, the conclusion of Judge Mc-

Crary, that other stipulations are not thereby invalidated, cannot be assailed. When there are several stipulations in a particular agreement, the fact that one of those stipulations is illegal does not defeat a recovery on the others when the stipulations are divisible and the consideration is not in itself illegal."

To the same effect are

Cook v. *Sherman*, 20 *Fed. Rep.*, 167.
Lincoln, S. B. & S. D. Co. v. *Allen*, 82 *Fed. Rep.*, 148.

In *Erie Railway Co.* v. *Union Locomotive & Express Co.* (35 *N. J. Law*, 240) it was held that where a contract is for the doing of two or more things which are entirely distinct, and one of them is prohibited by law and the others are legal, such illegality of the one stipulation cannot be set up as a bar to an action for a breach of one of the valid stipulations.

There, the firm of Kasson & Company, who were the assignors of the Union Locomotive & Express Company, entered into an agreement to provide cars and trucks sufficient in size, strength, weight and capacity whereon to carry all locomotive engines and tenders, and that they would be at the expense of loading and unloading the same; and for the motive power, which was to be supplied by the Erie Railway Company, the defendants, and for the unusual wear and strain of their railway, a certain compensation, which was stated in said articles of agreement, was promised to be paid. On their side, the Erie Railway Company agreed, in addition to the stipulations for providing motive power and giving the use of the road, that the cars of Kasson & Company should be the

only cars employed in the transportation of locomotive engines and tenders.

This latter provision was treated as void, but it was nevertheless held that the Union Locomotive & Express Company, as the assignee of Kasson & Company, were entitled to maintain an action for damages occasioned by breach of the contract on the part of the Erie Railway Company.

That eminent jurist, Chief Justice Beasley, said:

"Let it be granted that the provision in question is illegal, and therefore void, still such concession cannot, in the least degree impair the plaintiff's right of action. The suit is not for a breach of this promise of the defendants, that no other cars than those of the plaintiffs shall be employed in this branch of the carrying business, but it is for the refusal of the defendants to permit the plaintiffs to transport locomotives and tenders according to their contract, over the railway of the Erie Company. This latter stipulation, the violation of which forms the ground of action, is distinct and entirely separable from the former one, in which it is alleged the illegality before mentioned exists. Admitting, then, for the purpose of the argument, the illegality insisted on, the legal problem plainly is this: Whether, when a defendant has agreed to do two things, which are entirely distinct, and one of them is prohibited by law, and the other is legal and unobjectionable, such illegality of the one stipulation can be set up as a bar to a suit for a breach of the latter and valid one. This point was but slightly noticed on the argument; nevertheless, an examination of the authorities will show that the rule of law upon the subject has from the earliest times been at rest. It was unanimously agreed in the case reported in the *Year Books*, 14 *Henry VIII.*, 25, 26, that if some of the covenants of an indenture, or of the conditions endorsed upon a

bond are against law, and some good and lawful, that in such case, the covenants or conditions which are against law are void *ad initio*, and the others stand good. And from that day to this, I do not know that this doctrine, to the extent of its applicability to this case has anywhere been disallowed. It was the ground of the judgment in Chesman *v.* Nainby, 2 Lord Raymond, 1456, that being a suit on an apprentice's bond. The stipulation alleged to have been broken was that the apprentice would not carry on the business in which she was to be instructed within 'the space of half a mile' of the then dwelling house of the plaintiff. There was also a further stipulation that she should not carry on this business within half a mile of any house into which the plaintiff might remove. The suit was for a breach of the former stipulation, and it was admitted that the latter one was void as imposing an unreasonable restraint upon trade, and it was urged that, by force of this illegal feature, the whole contract was void. But the Court were unanimously of opinion that as the breach was assigned upon that part of the condition which was good in law, therefore if the other part, to which exception was taken, was against law, yet that would not hinder the recovery upon part of the condition which was legal. This judgment was afterwards affirmed by the twelve judges, on an appeal to parliament. * * *

"These and other authorities which might be referred to, settle the rule, that the fact that one promise is illegal will not render another disconnected promise void. The doctrine will not embrace cases where the objectionable stipulation is for the performance of an immoral or criminal act, for such an ingredient will taint the entire contract and render it unenforceable in all its parts by reason of the maxim *ex turpi causa non oritur actio.*"

In *Stewart* v. *Lehigh Valley R. R. Co.* (38 *N. J. Law*, 505) a Canal Company made a cov-

enant with the plaintiff to give him a drawback on all freight shipped by him, and to give no drawback to anybody else who competed with him. The former covenant being valid, although the latter was void, was held to be enforceable.

See also *Greenhood on Public Policy*, pp. 20, 21.

The principle of these cases is directly in point here. The plaintiff agreed to sell to the defendants certain merchandise at an agreed price. The latter agreed to pay for the merchandise received the stipulated price, and also agreed that they would not sell such merchandise at a lesser price than that specified in the contract.

Assuming that the latter condition is void, in that event it was not binding upon the defendants; but, as has been seen, such invalidity would not absolve the defendants from liability on their covenant to pay for the merchandise delivered.

It will be noted, that this is not a case where the element of illegality enters into the consideration, which passes from the plaintiff. It merely relates to one of two promises made by the defendants, one of which is entirely valid, and the other we will assume was not enforceable against them. There is here no attempt to enforce the alleged illegal stipulation. That does not enter into the plaintiff's cause of action, which is confined to an attempt to recover the agreed purchase price of the merchandise delivered to the defendants.

This doctrine of the divisibility of covenants has been recognized by the Supreme Court of Ohio in *Lange* v. *Werk*, 2 *Ohio St.*, 519, 531, and in *Widoe* vs. *Webb*, 20 *Ohio St.*, 435, the opinion of Chief Justice Scott in the latter case, laying

down the rule in substantially the terms which we have quoted from *Hammon on Contracts.*

In fact this doctrine has been greatly extended by that court in *King* vs. *King,* 63 *Ohio St.,* 363, on the theory, that the mischief likely to ensue to the public, by permitting a recovery, notwithstanding a void stipulation in a contract, would be less than that likely to follow a holding, which would encourage the violation of contracts and the repudiation of just obligations, after the receipt of full value by the party seeking to repudiate.

V.

Again assuming that the plaintiff is a trust violative of Senate Bill No. 336 of the general laws of the State of Ohio for 1898, yet such violation does not debar the plaintiff from recovering for the goods sold by it, to the defendants.

This act is in effect the same as the Sherman Anti-Trust Law of 1890 which has just been considered, and the same reasons which induced this Court in *Connolly v. Union Sewer Pipe Company* (*supra*) to declare that the act did not justify the defense which was interposed under its provisions to an action to recover for goods sold, apply to the defence interposed here under the Ohio statute.

Section 1 of that act defines a trust and declares such trust, as defined, to be unlawful, against public policy, and void.

Section 2 authorizes the commencement of a suit by the Attorney-General, or the prosecuting attorney of the proper county against the offending corporation or association for the forfeiture of its charter.

Section 3 prohibits a foreign corporation violating the act, from exercising any of its powers, franchises and functions in the State of Ohio, and imposes the duty upon the Attorney-General to enforce this prohibition by proceedings in *quo warranto.*

Section 4 declares a violation of the provisions of the act to be a conspiracy against trade and subjects the offender to fine and imprisonment.

Section 5 specifies the requisites of an indictment.

Section 6 regulates the evidence admissible in support of the allegation that a trust has been created.

Section 7 imposes a penalty upon a violator of any of the provisions of the act, and prescribes the method of enforcing it.

Section 8 enacts "That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity."

Section 9 makes the provisions of the act cumulative of each other.

Section 10 makes it unlawful for any person to own trust certificates or to enter into a combination, and imposes a penalty.

Section 11 confers a cause of action in favor of any person who shall be injured in his business or property by any other person or corporation, by reason of anything forbidden or declared to be

unlawful by the act, to recover two-fold the damages by him sustained.

This analysis of the statute shows, that like the Sherman Anti-Trust Act it contains no provision such as is contained in the Illinois Anti-Trust Law of 1893, which is to the effect that

"Any purchaser of any article or commodity, from any person, firm, corporation or association of persons, or of two or more of them, transacting business contrary to any provisions of the preceding sections of this act shall not be liable for the price or payment of such article or commodity and may plead this act as a defence to any suit for such price or payment."

Hence the rule as applied in *Connolly* v. *Union Sewer Pipe Company* (*supra*), must prevail.

All that the Ohio statute does is to render a trust or combination, such as is defined in the statute, unlawful in the sense that if it is a domestic corporation its charter can be revoked in *quo warranto* proceedings set in motion by the state authorities, and if it is a foreign corporation that it may be prohibited by state action from exercising its powers, franchises or functions within the State of Ohio; subject its officers to civil and criminal prosecution, and to render any contract or agreement in violation of the provisions of the act void as to the parties thereto.

The act does not forfeit the property of the trust; does not render it the prey of the spoliator; does not render it an outlaw, or deprive it of the right of enforcing contracts which it has entered into with third parties.

It cannot be for a moment pretended that Section 8 is intended to deprive a trust of the power to

collect for goods sold by it. The contract or agreement which by that section is declared to be void, is a contract or agreement "in violation of the provisions of this act." Such an agreement is one which is defined in Section 1. That section declares that a trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.

2. To limit or reduce the production, or increase or reduce the price of merchandise or any commodity.

3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity, etc.

5. To make or enter into or execute or carry out any contracts, etc., by which they shall bind or have bound themselves not to sell, etc.

Clearly, this relates to a contract between the parties forming the trust, and not to a contract between the trust after it is formed and a person to whom goods are sold, or money is loaned, or service is rendered by the trust.

It is not pretended that the defendants were parties to the trust. On the contrary, they claim that they have been injured by the trust; that they are victims and not *participes criminis.*

Section 8, therefore, relates to the familiar case where an executory agreement has been entered into for the formation of a trust and it is sought to be enforced; or where one of the parties to the trust seeks to recover a benefit thereunder from the trust itself. In such cases it is the policy of the act to leave the parties to the illegal contract where it finds them.

Here, however, the contract for the sale of wall paper by the plaintiff to the defendants was not an illegal contract, but at most was collateral to the alleged illegal combination which is claimed to fall within the ban of this statute.

The authorities cited under previous points indicate that no defence has been established under the Ohio Statute.

VI.

But should it be claimed that the Statute is susceptible to the interpretation, which the defendants seek to give it, it is insisted that the act is unconstitutional and void so far as it applies to the plaintiff, a foreign corporation, since it is an attempt on the part of the State of Ohio to regulate commerce between the several States.

The plaintiff is a New York corporation. The defendants transact business in Cleveland, Ohio. The contract between the plaintiff and the defendants was made in New York, and under the terms of the jobbers' agreement which is annexed to the answer the plaintiff was to deliver the goods purchased by the defendants f. o. b. at New York or Philadelphia. The delivery of the goods therefore was outside of the State of Ohio, and the goods were to be shipped into that State.

Exhibit 7 attached to the answer, shows that all of the goods for which recovery is sought in this action came from manufacturers outside of the State of Ohio. It is therefore clear that the transaction between the plaintiff and the defendants was one of inter-state commerce and is consequently beyond the purview of state legislation.

While it is within the power of the State of Ohio, to discipline its own corporations, and to prohibit a foreign corporation from doing business within its boundaries, it is not within its power to punish

criminally, or by forfeiture of property, the act of a foreign corporation, which sells its goods to a citizen of Ohio, under a contract involving the transportation of goods from without that state into its domain.

If the Act of Congress applies to these transactions, that of Ohio cannot be applicable.

Minnesota v. *Barber*, 136 *U. S.*, 313.
Brunner v. *Rebman*, 138 *U. S.*, 78.
Voight v. *Wright*, 141 *U. S.*, 62.
People v. *Hawkins*, 157 *N. Y.*, 1.
People ex rel. Theat v. *Coler*, 166 *N. Y.*, 144.
Addyston Pipe Co. v. *U. S.*, 175 *U. S.*, 241.
Hopkins v. *U. S.*, 171 *U. S.*, 578.
Haldy v. *Tomvor Haldy Co.*, 4 *Ohio Dec.* 118.
Caldwell v. *North Carolina*, 187 *U. S.*, 632.
Hadley-Dean Mal. Glass Co. v. *Highland Glass Co.*, 143 *Fed. Rep.*, 242; C. C., App., 8th Cir.

VII.

There is nothing in the Statutes of the State of New York, which are invoked by the defendants, which prevents the plaintiff from recovering against the defendants, for the goods sold to them.

While Section 7 of the Stock Corporation Law, as amended by Chapter 384 of the Laws of 1897, declares that no domestic stock corporation and no foreign corporation doing business in this state, shall combine with any other corporation, or person, for the creation of a monopoly or the unlawful restraint of trade, or for the prevention of competition in any necessary of life, that section, even assuming that wall paper is a necessary of life, does not prohibit the vendor from recovering the purchase price.

Neither does the additional act to prevent monopolies, Chapter 383, Laws of 1897, which was superseded and repealed by Chapter 690 of the Laws of 1899, effect such a result. Like the Ohio statute, it defines a monopoly and declares it to be against public policy, illegal and void. It subjects the violator of the act to fine and imprisonment. It authorizes the Attorney General to prevent and restrain the doing in the State of New York, of any act declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination prohibited. It enables the Attorney General to take proceedings to procure evidence of a violation of the act, and requires those proceeded against to produce books, papers and documents.

But it nowhere goes to the extent, of prohibiting a trust or monopoly, referred to in the act, from enforcing a contract other than that which creates the trust or the monopoly.

It is needless, therefore, to consider whether or not this act has any extra-territorial effect, and whether the Federal Court sitting in Ohio could undertake to enforce the public policy of the State of New York, should the statute under consideration have undertaken to forbid a trust or monopoly from recovering on a contract for goods sold and delivered, which, as has been seen, it did not undertake to do.

The weight of authority indicates, that such an act, cannot be enforced beyond the boundaries of the State, in which it has been enacted.

Greer Mills Co. vs. *Stoller*, 77 *Fed.*, 1.
In re Grice, 79 *Fed. Rep.*, 627.

VIII.

The judgments of the Courts below should be reversed, and judgment directed in favor of the petitioner on the demurrers interposed.

Louis Marshall,
Joseph Wilby,
Counsel for Petitioner.

Filed Supreme Court, U. S.
APR 21 1908
JAMES H. McKENNEY,
Clerk

No. 15

Supreme Court of the United States

OCTOBER TERM, 1907.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

vs.

THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

Brief for Respondent.

ORRIS P. COBB,
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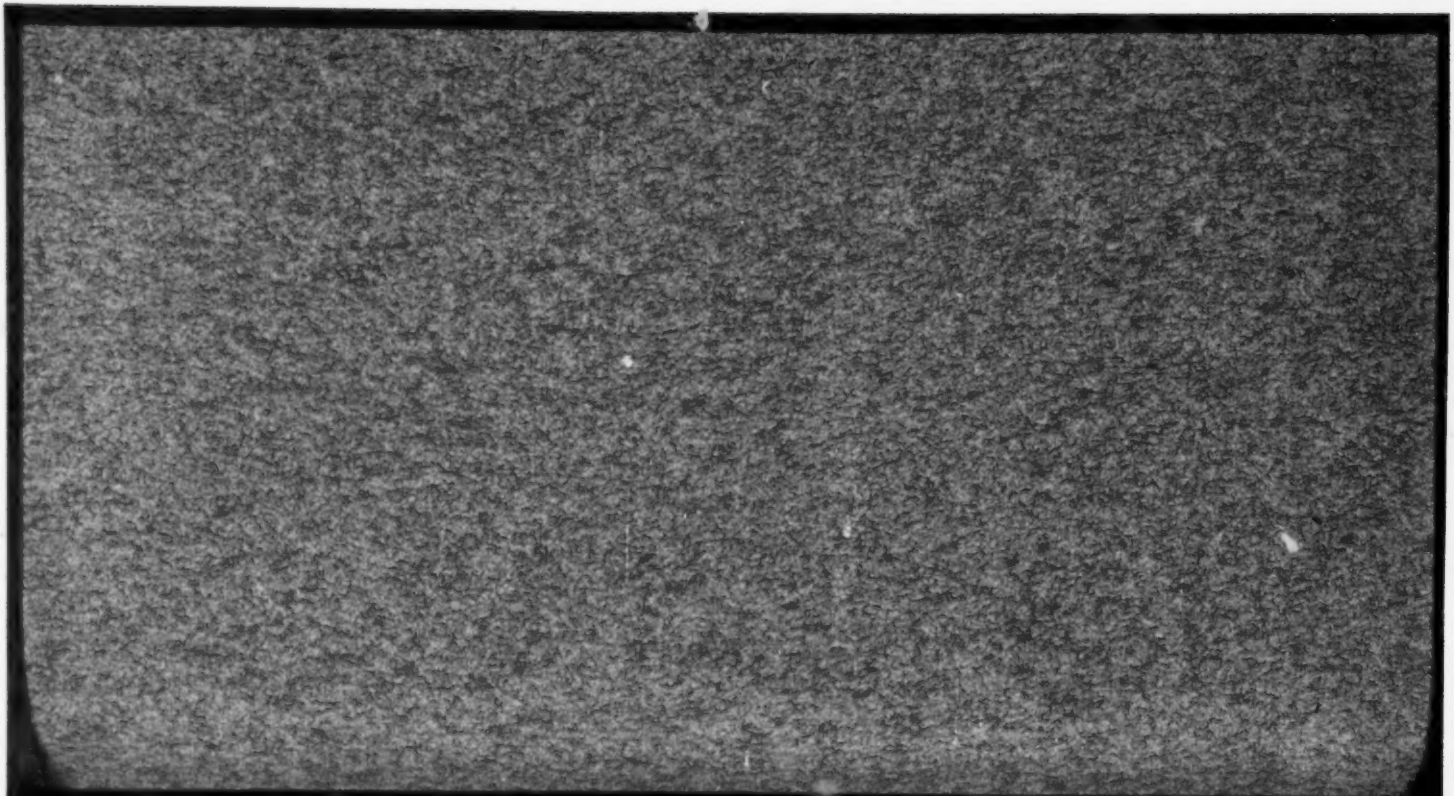

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

No. 212. vs.

THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

Brief for Respondent.

The petitioner, by these proceedings, seeks to reverse a judgment entered in the Circuit Court of the United States, Southern District of Ohio (Rec., p. 439), recently affirmed by the United States Circuit Court of Appeals for the Sixth Circuit (Rec., p. 447), which judgment dismissed the petition of the plaintiff below, who is the petitioner here, at its costs. This action in the Circuit Court followed the overruling of the demurrer of the plaintiff to the third defense in defendant's amended answer, and was based upon the election of the plaintiff not to plead further. The demurrer and the action of the

plaintiff in electing not to plead further, are confessions of the truth of the facts alleged in said third defense.

I.

This third defense to the amended answer (Rec., pp. 387-399) sets forth various facts showing the formation in 1898 of a trust or unlawful combination in the wall paper business in the United States, to which ninety-eight per cent. of the manufacturers of wall paper, the plaintiff, all the manufacturers of wall paper machinery, *and all the wholesalers, jobbers and quantity buyers, including the defendant, were parties under various agreements and contracts,* which agreements and contracts were contrary to public policy and void:

(*a*) At common law;

(*b*) Under the laws of the state of New York where the agreements were entered into and the contracts signed;

(*c*) Under the laws of the state of Ohio where they were to be carried out in part and the goods delivered, and thereafter to be sold for delivery in various states;

(*d*) And under the act of Congress commonly known as the "Sherman Act";

And further that the suit in form on an account set forth in the petition as amended was an attempt to enforce said illegal trust agreements.

A reading of the third defense is necessary to an understanding of the position of the defendant.

In brief the facts alleged in this third defense and admitted by the plaintiff to be true and which show the existence of this illegal combination are these:

Prior to 1898 there were in existence in the United States some thirty-five factories manufacturing wall paper, controlling upwards of ninety-eight per cent. of the business of the country in that commodity (Rec., p. 389). Seventeen of them were owned by the National Wall Paper Company and eighteen by independent firms, individuals or corporations. They were located in seven states: New York, Pennsylvania, Massachusetts, New Jersey, Maryland, Delaware and Ohio. They were in free and unrestricted competition with each other, and all were engaged in interstate commerce throughout the United States. There were two manufacturers of wall paper machinery: one located in New Jersey, the other in Wisconsin (Rec., p. 394). There were wholesale dealers like the defendant, and retail dealers scattered all over the country. The defendant was such a jobber or wholesale dealer, at Cincinnati, who bought goods from the manufacturers in other states (Rec., pp. 387, 388), and sold goods through Ohio, Kentucky, Indiana and Illinois and other states and territories (Rec., p. 396).

In July, 1898, the scheme was devised to unite all the manufacturers and wholesalers and jobbers of wall paper and manufacturers of wall paper machinery in a combination to control this business. The retailers and consumers were alone left out.

The manufacturers agreed with one another that, while they should retain the ownership of their several plants and businesses and preserve their separate indentities and operate said several manufactories and businesses as before, the control of said several businesses in all matters relating to and affecting the production of said establishments and the prices and sale of wall paper and the clas-

sification of dealers should be placed under the control of a committee, which would adopt regulations and rules governing the manner of conducting the business of all the said manufacturers, including the fixing of prices and the division of the profits (Rec., pp. 389-390).

In carrying this agreement into effect, the following plan was devised (Rec., pp. 389, 390): The plaintiff corporation was to be organized under the laws of New York, with a capital stock of $200,000, divided into 16,000 shares of $12.50 each, for the ostensible purpose of taking the entire output of wall paper to be manufactured. The stock was to be divided among the manufacturers in proportion to the number of rolls of paper manufactured by them the preceding year. It was to be paid for in cash and immediately endorsed in blank and deposited with the plaintiff (Rec., pp. 390, 394, 406, 409). As the National Wall Paper Company controlled about one-half of the business, it was to name three so-called directors of the company and the other manufacturers another three, and these six were to choose a seventh, a sort of umpire (Rec., p. 390), who would together in reality constitute the aforesaid committee (Rec., p. 295). Then a contract (Ex. 1—Rec., p. 406) was to be entered into between each of the manufacturers and the corporation so organized, viz., the plaintiff. Another contract (Ex. 2—Rec., p. 419) was to be entered into between the plaintiff and each jobber, of which three classes, known as "First," "Second" and "Third" Class Jobbers were to be formed (Rec., p. 395). The plaintiff under the terms of the written agreement was to sell the goods to the jobber. A third contract (Ex. 3—Rec., p. 433) was to be entered into between each man-

ufacturer and any other purchaser of wall paper in large quantities, known as a "quantity buyer" (Rec., p. 396).

The manufacturers, under the terms of said written agreement, were to sell the wall paper to the "quantity buyers" for the account of the plaintiff. All other purchasers of wall paper were to buy their goods at certain fixed prices, known as "list prices," and all the manufacturers, jobbers and "quantity buyers" were to agree with the plaintiff not to sell any wall paper to any one at less than such "list prices." These list prices were embodied in and made part of the contracts and are the same in each (See Exhibits 1, 2, 3—Rec., pp. 412, 415, 416, 421, 427, 433).

All wholesalers and jobbers were also to be compelled to agree to buy from no one but the manufacturers of wall paper who were parties to the scheme, which agreement was to be in some form that would disguise the real nature of the transaction (Rec., p. 391).

In order to secure the faithful performance of these agreements and to prevent their violation by any member of the combination, whether in his capacity as manufacturer, jobber or quantity buyer, the following devices were adopted:

"Good faith" was to be secured on the part of the manufacturers by their furnishing statements and invoices of sales to the company and permitting the latter to audit their books (Rec., pp. 392, 393, 408), and further by their paying into the treasury of the plaintiff $200,000 as subscriptions for stock and at the same time depositing their stock with the company to be taken as liquidated damages in case of any violation of their contracts (Rec., pp. 394, 406, 409). Since the contracts were illegal, neither

party to them could ever recover upon them, and the manufacturers could neither get back their stock nor their money if they violated the terms of their contract. Again, "good faith" was further to be secured on the part of the manufacturers by removing all temptation to violate the agreement, because of the tying up of the wholesale trade by agreements compelling them to buy only from those in the combination. A manufacturer, violating the terms of his agreement, would find no market for his product.

The same "good faith" was to be secured on the part of the jobbers and quantity buyers by refusing to let them have any paper from practically the only sources in the country whence it could be procured, if they bought paper from any one else or sold what they bought at any time at less than list prices (Rec., pp. 391, 394, 395, 419, 433).

To make sure that no other persons could manufacture wall paper, all makers of wall paper machinery agreed not to sell such machinery to any one but the plaintiff and the manufacturers who were in the combination (Rec., p. 394); and to prevent the manufacturers from increasing their capacity, and thus exposing themselves to the temptation of selling their product at less than list prices, they agreed not to run their factories longer than ten hours a day and to put in no machinery except to replace old machines which were discarded (Rec., pp. 393, 408, 409). Competition and cutting of prices in the United States by Canadian members of the trade were also prevented by appropriate agreements (Rec., p. 396).

Nominally the plaintiff was to buy the entire product of all the factories at prices which were the estimated cost of the manufacture and incidental expenses (Rec., pp.

391, 406). All contracts with and collections from jobbers were to be in the plaintiff's name, but the contracts with and collections from quantity buyers and other purchasers were to be attended to by the manufacturers (Rec., pp. 391, 392, 406, 407).

In reality the agreement was, and so the business was carried on, that the manufacturers should maintain sample rooms and selling agents and solicit and receive orders from all wholesalers, whether jobbers or quantity buyers; that the entire business should be done by the manufacturers, but payments should be made by the jobbers to the so-called company, the plaintiff (which was designated in the written agreement as "selling agent," Rec., p. 406), and by wholesalers, other than jobbers, directly to the manufacturers (Rec., pp. 392, 397).

Blank forms of contract for the different members were prepared and agreed upon and the prices fixed (Rec., pp. 390, 395, 396, 407). The combination was to last one year, with privilege of two renewals for one year each under certain conditions (Rec., pp. 394, 406, 407).

The plaintiff was to have general supervision of the business of each manufacturer, with the right to examine its books and establish a general system of accounting (Rec., pp. 393, 408). All invoices of sales were to be furnished and accounted for to the plaintiff (Rec., p. 392). The profits of the manufacturers were to be divided in the form of dividends on the stock based upon capacity and without reference to actual sales made by any manufacturer (Rec., p. 391). The profits of the jobbers were the difference between the list prices and the discounts allowed.

The foregoing scheme was completely carried out. Pursuant to said agreement, the defendant and every other jobber and wholesaler of wall paper in the United States, and all persons engaged in commerce in the wall paper trade, were compelled to, and did, sign the agreements contemplated as aforesaid, copies of which are attached to the answer as Exhibits 2 and 3, by which means competition between the manufacturers and the vendors of wall paper and between jobbers and wholesalers was stifled, and the price of wall paper unduly enhanced, making it 50 per cent. higher than it would otherwise have been (Rec., pp. 396, 397; Exhibit 2—Rec., p. 419; Ex. 3—Rec., p. 433).

The prices charged for merchandise in the exhibits attached to the amended petition are the prices fixed and determined in pursuance of and by the combination or trust agreement, and are at least one-half more than they would otherwise have been. All of said business was transacted in pursuance of said trust agreement (Rec., pp. 398, 399). The manufacturers in the combination used the plaintiff only as a cloak. They themselves, as before, maintained sample rooms and selling agents, and solicited and received orders (Rec., p. 392). The itemized accounts which plaintiff was compelled to furnish by way of amendment to its petition, are accounts of manufacturers, and not of the plaintiff with the defendant (Rec., pp. 41-350 inc.).

The suit by plaintiff on an account is an attempt to enforce the illegal agreement.

II.

This Case Does not Involve the Claim that a Third Person Purchasing From an Illegal Trust Can, Because of that Illegality, Escape Payment for Articles Purchased.

The plaintiff in error will doubtless insist here, as below, that this defense involves a contention upon the part of the defendant that a third person outside of a trust buying goods from the trust can set up in defense to an action for the purchase price of the goods, that the plaintiff is an illegal combination or trust. No such contention is made upon behalf of the defendant and it is conceded that no such defense would be effective. Were there ever any doubt of the proposition, such doubt has been removed by the decision of this court in *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S., 540, 545.

This case adopted the principle announced in many *nisi prius* cases prior thereto.

> *Edison Elec. Lt. Co.* v. *Sawyer-Mann Elec. Co.*, 53 F. R., 592, 598.
> *Amer. Soda Fount. Co.* v. *Green*, 69 F. R., 333.
> *Empire Dis. Co.* v. *McNulta*, 77 F. R., 700.
> *Olmstead* v. *Dis. & Cattle Feed Co.*, 73 F. R., 44.
> *Dennehy* v. *McNulta*, 86 F. R., 825.
> *Brown Saddle Co.* v. *Troxel*, 98 F. R., 620.
> *Nat'l Folding Box & Pa. Co.* v. *Robertson*, 99 F. R., 985.
> *Otis Elev. Co.* v. *Geiger*, 107 F. R., 131.
> *Harrison* v. *Glucose Sug. Ref. Co.*, 116 F. R., 304, p. 308.

Combinations in restraint of trade and commerce are illegal and have been made by statute criminal, but they are not outlawed. Had the scheme been confined to the

agreements actually made between the manufacturers and the plaintiff (Exhibit 1 to answer) there would have been a solid basis for the argument that the defendant could not set up the illegal character of those contracts either at common law or under the statutes to defeat a suit for the purchase price of goods sold to defendant.

The scheme and the agreements entered into to carry it into effect were not, however, confined to the plaintiff and the manufacturers. The defendant and every wholesale dealer in wall paper in the United States were parties to the scheme, and, in pursuance of the plan adopted, entered into contracts with the plaintiff containing provisions adapted to the purpose of carrying out the illegal objects of the trust and intended so to do, that is, to enhance and fix prices, to stifle competition and to restrain trade between the states (Rec., p. 397; Exhibits 2 and 3 attached to answer at Rec., pp. 419, 433). Plaintiff is now suing upon one of the contracts, though in the short form, on an account permitted by the Ohio code.

This position is more fully presented hereafter in the brief but is now noted at the outset, because much of the brief of the other side is based on the assumption that the Connolly case controls.

III.

The Combination is One in Restraint of Trade or Commerce Among the Several States and an Attempt to Monopolize the Wall Paper Trade or Commerce Among the States.

The question is not, as treated by counsel for plaintiff in error, simply one as to whether or not the plaintiff com-

pany is a trust or unlawful combination. It is that and much more, for the plaintiff company is but an incident in the general scheme which embodies a combination between the manufacturers and wholesale dealers throughout the country. Plaintiff's corporate organization can not be used as a cloak to cover the illegal contracts between the parties to the scheme, nor does it make legal that scheme which without it would be clearly illegal.

Northern Securities Co. v. *U. S.*, 193 U. S., 197.
Distilling Co. v. *People*, 156 Ill., 448.
Harding v. *Glucose Co.*, 182 Ill., 551.
Richardson v. *Buhl*, 77 Mich., 632, 656 *et seq.*

The court will look through it for the intent of the real parties to the agreements forming the scheme, and will not be stopped by its nominal capitalization, which is less than a year's purchases of wall paper by the defendant alone (Rec., pp. 3, 398, 399), and only 1-190 part of the capitalization of the National Wall Paper Co., one of its constituent companies (Rec., pp. 352, 353). The court will see, as is alleged and admitted, that the agreements with and sales to the defendant were in fact made by the manufacturers, parties to the scheme (Rec., pp. 389, 390, 392, 399), and that the plaintiff is but a nominal party to them all.

The language of Judge Minshall in *State* v. *Standard Oil Co.*, 49 O. S., 179, is applicable although used of the converse of the proposition:

> "Now, so long as a proper use is made of the fiction, that a corporation is an entity apart from its shareholders, it is harmless, and, because convenient, should not be called in question, but

> where it is urged to an end subversive of its policy, or such is the issue, the fiction must be ignored, and the question determined, whether the act in question, though done by shareholders, that is to say, by the persons united in one body, was done simply as individuals, and with respect to their individual interests as shareholders, or was done ostensibly as such, but, as a matter of fact, to control the corporation and affect the transaction of its business, in the same manner as if the act had been clothed with all the formalities of a corporate act. This must be so, because the stockholders having a dual capacity, and capable of acting in either, and a possible interest to conceal their character when acting in their corporate capacity, the absence of the formal evidence of the character of the act, can not preclude judicial inquiry on the subject. If it were otherwise, then in one department of the law, fraud would enjoy an immunity awarded to it in no other."

The scheme was not confined to the manufacturers alone, as in *U. S.* v. *Knight*, 156 U. S., 1.

Though limiting, controlling and regulating production, its general object and scope was to control the manufacturing, buying, selling and dealing in wall paper, to be transported among the several states from a time anterior to its manufacture, until it reached, through the manufacturers, the plaintiff, and through the plaintiff, the wholesalers, through the wholesalers, like the defendant, the retail dealers and consumers, in Ohio, New York and other states.

Different functions in accomplishing this purpose were alloted to different members. To the plaintiff was al-

lotted the task of keeping the manufacturers to their bargains as to prices, etc., and making contracts in its name with the jobbers and seeing that these contracts were observed; to the manufacturers was allotted the task of manufacuring the goods and selling to all purchasers, except jobbers, at the prices named, and not producing more wall paper than a fixed amount, viz., the then capacity of their mills; to the jobbers and quantity buyers, such as the defendant, was allotted the task of buying only from the plaintiff and the manufacturers, and selling only at prices which the manufacturers, the plaintiff and the wholesalers and the jobbers had agreed upon. Each party to the scheme and every contract in reference to it was an integral and necessary part to make effective the purposes of crushing out competition, enhancing and fixing the prices, and monopolizing the wall paper industry of the United States.

To the retailers of wall paper and consumers was allotted the task of paying the bills.

There could have been no other object than the enhancement and control of prices and the restraint of trade for the purpose of enhancing prices. It is so alleged and the demurrer admits such to be the fact. All the factories (so-called vendors) in the combination maintained sample rooms and selling agents, and solicited and received orders, just as before the combination (Rec., p. 402, par. 3). The Continental Wall Paper Company did not, therefore, work an economy of expenses for the several factories in the combination by combining, and therefore decreasing the aggregate sales expense, but on the contrary, increased expenses, for the factories in the combination were compelled to send duplicate bills to the Continental Wall

Paper Company every time they made a sale to a customer and the Continental Wall Paper Company was obliged to maintain bookkeepers to properly enter these duplicate accounts, to pay dividends, maintain an organization, etc.

The combination was not, therefore, formed for the purpose of economizing expense, but its sole and only purpose and object was to enhance prices and restrict competition. After the combination was made complete (embracing more than 98 per cent. of all wall paper manufacturers and all manufacturers of wall paper machinery) and the agreements had been signed by the several factories, and by their creature, the Continental Wall Paper Company, and the wholesalers had been compelled to sign the agreements, Exhibits 2 and 3, it was thereafter impossible.

1. For any manufacturer of wall paper to sell, except at trust prices.

2. For any jobber of wall paper to buy, except at trust prices.

3. For any jobber to buy wall paper at any price, unless assenting to the combination's exactions, and becoming a party to the scheme and entering into the illegal agreement.

4. For any retail dealer in wall paper to buy of any jobber, except at trust prices.

5. For any individual consumer of wall paper to buy from any retailer, except at prices exacted as a result of the combination.

6. And finally, by reason of the control of all concerns manufacturing wall paper machinery in this country and Canada, no person or persons, firm or corporation could start up an independent factory.

A MORE COMPLETE AND EFFECTIVE COMBINATION TO RESTRICT COMPETITION AND ENHANCE PRICES COULD NOT BE IMAGINED.

Thus treating the matter, as it must be treated, as one general scheme, all one agreement, it is too plain for argument that it comes within the common law inhibition against contracts in restraint of trade, as well as the statutes. It is a method of treatment which plaintiff avoids. It would like to take up one part of the scheme and treat a contract in reference to that part as the only fact to be considered. That, however, will not answer. As said by Mr. Justice Peckham in *Addyston Pipe & Steel Co.* v. *The United States*, 175 U. S., 211, at page 245:

> "All the facts and circumstances are, however, to be considered in order to determine the fundamental question—whether the necessary effect of the combination is to restrain interstate commerce."

Mr. Justice Holmes, in *Swift & Co.* v. *U. S.*, 196 U. S., 375, 396, said:

> "The scheme, as a whole, seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body and, for all that we can say, to accomplish it. Moreover, whatever we may think of them separately when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful, and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. *Aikens* v. *Wisconsin*, 195 U. S., 194, 206."

It was also said by Mr. Justice Peckham, in *Montague* v. *Lowry*, 193 U. S., 38, 45, in arriving at the conclusion that the scheme therein considered related to interstate commerce, and, therefore, within the prohibition of the Sherman Act:

> "The provision as to this sale is but a part of the agreement, and it is so united with the rest as to be incapable of separation without at the same time altering the general purpose of the agreement. The whole agreement is to be construed as one piece, in which the manufacturers are parties, as well as the San Francisco dealers, and the refusal to sell on the part of the manufacturers is connected with and a part of the scheme, which includes the enhancement of the price of the unset tiles by the San Francisco dealers. The whole thing is so bound together that when looked at as a whole, the sale of unset tiles ceases to be a mere transaction in the state of California, and becomes part of a purpose which, when carried out, amounts to, and is, a contract or combination in restraint of interstate trade or commerce."

Mr. Chief Justice Fuller has, within a few months, used similar language in reference to treating the scheme or combination as a whole, in *Loewe* v. *Lawlor*, 208 U. S., 274, 28 Supreme Court Reporter, 301, at p. 309.

The scheme now in question in this case was so treated and held, as an entirety, by Judge Wing in the Northern District of Ohio, in a case between the Continental Wall Paper Company and William H. Findlay et al, involving precisely this defense in a precisely similar case, on precisely similar facts. He said:

"By the third defense, it appears that the contract of sale, upon which is founded the claim of the plaintiff, if any it have, was one to which the plaintiff and many manufacturers of wall paper and the defendants were parties. In this contract, which is Exhibit 3, attached to the answer, is found the following clause: 'It is an essential condition of this agreement, that the jobber will not, directly or indirectly, sell, or offer for sale, any of the merchandise purchased from the company hereunder, at lower prices, or upon better or more favorable terms than those shown in Schedule B; the intent hereof being to insure the company against the use by the jobber of this agreement to undersell the company.' This is clearly a contract in restraint of trade. The provision quoted inures to the benefit of the plaintiff and of a great number of manufacturers of wall paper located in various states of the Union. The business of the defendants, in the sale of wall paper, was carried on, as jobbers, in several states of the Union. The effect, therefore, of this provision of the contract, was to restrain commerce among the several states. It appears from this defense that it will be necessary for the plaintiff, in establishing its right to recover from the defendants, to rely upon this illegal contract. It is the undisputed law that, in such a situation, the court will refuse, not only to enforce such contract, but any alleged rights directly springing from it. Therefore, the demurrer to the third defense is overruled."

IV.

This Combination Was an Illegal Trust, and an Unlawful Combination Within the Meaning of the Statutes.

It is hardly necessary to discuss the proposition that this combination was not an illegal trust or unlawful combination within the meaning of the state or federal statutes.

If there are any cases to the contrary, they have been effectually disposed of in the case of *The United States* v. *The Addyston Pipe & Steel Company*, 85 F. R., 271, as affirmed by this court 175 U. S., 211, 244, and in its later decisions.

It is only necessary to refer to the following decisions, some of which have arisen under the Sherman Act, and some without reference to statutes, but all of which have involved the direct consideration of the illegal agreement or combination:

U. S. v. *Trans. Mo. Frgt. Assn.*, 166 U. S., 290.
U. S. v. *Joint Traf. Assn.*, 171 U. S., 505.
Montague v. *Lowry*, 193 U. S., 38.
Northern Securities Co. v. *U. S.*, 193 U. S., 197.
Swift & Co. v. *U. S.*, 196 U. S., 375.
National Cotton Oil Co. v. *Tex.*, 197 U. S., 115, 129.
U. S. v. *Jellico C. & C. Co.*, 46 F. R., 432.
Amer. Bis. Mfg. Co. v. *Klotz*, 44 F. R., 721.
Oliver v. *Gilmore*, 52 F. R., 562.
C., M. & St. P. R. Co. v. *Wab., S. L. & E. R. Co.*, 61 F. R., 993, 997.
Nat'l Harrow Co. v. *Hench*, 83 F. R., 36, 38.
Nat'l Harrow Co. v. *Hench*, 84 F. R., 226.

U. S. v. *Coal Dealers' Assn.*, 85 F. R., 252.
Cravens v. *Carter-Crume Co.*, 92 F. R., 479, 485.
Lowry v. *Tile & G. Assn.*, 98 F. R., 817, 826.
Lowry v. *Tile & G. Assn.*, 106 F. R., 38.
Montague v. *Lowry*, 115 F. R., 27.
U. S. v. *C. & O. Fuel Co.*, 105 F. R., 93.
C. & O. Fuel Co. v. *U. S.*, 115 F. R., 610.
City of Atlanta v. *Chat., F. & P. Co.*, 101 F. R., 900.

The cases which apparently hold the contrary, such as—

Olmstead v. *The D. & C. F. Co.*, 77 F. R., 265;
In re Green, 52 F. R., 104;
Deuber Watch Co. v. *E. Howard W. & C. Co.*, 66 F. R., 637;
Continental Ins. Co. v. *Bd. of Und.*, 67 F. R., 310,

are based on *The Mogul Steamship Co.* v. *McGregor*, L. R. (1892), Appeal Cases, 25, or are overruled, as pointed out in *The Addyston Pipe Case*, 85 Fed., 286, 300, or are distinguished in that case.

The cases, federal and state, also establish the further proposition, that a contract in restraint of trade, though on its face not unreasonable, and hence not void at common law, may become such if it is simply a part of a general scheme or one step towards the accomplishment of the purpose to restrain competition and establish a monopoly.

U. S. v. *Addyston P. & S. Co.*, 85 F. R., 271, 285, 291, and cases cited.
Cravens v. *Carter-Crume Co.*, 92 F. R., 479, 485.
Detroit Salt Co. v. *Nat'l Salt Co.*, 134 Mich., 103. 120.
Pacific Fac. Co. v. *Adler*, 90 Cal., 110.
Finck v. *Granite Co.*, 187 Mo., 244, 2d syl. and opin., p. 269.

Of course parties to such a combination can not plead an honest intent in forming the combination, or the reasonableness of the restraint; under statutes forbidding such combination or agreement, such defenses are immaterial.

U. S. v. *Joint Traf. Assn.*, 171 U. S., 505, 565.
Addyston P. & S. Co. v. *U. S.*, 175 U. S., 211.
U. S. v. *C. & O. Fuel Co.*, 105 F. R., 93.
C. & O. Fuel Co. v. *U. S.*, 115 F. R., 610, 619.
U. S. v. *Hopkins*, 82 F. R., 529.
U. S. v. *Coal Deal. Assn.*, 85 F. R., 252, 262, 264.
U. S. v. *Addyston P. & S. Co.*, 85 F. R., 271, 278, 291.

Contracts and conspiracies which prevent free and unrestricted competition in interstate commerce are within the condemnation of the federal statute.

Montague v. *Lowry*, 193 U. S., 38.
Northern Securities Co. v. *U. S.*, 193 U. S., 197.
Loewe v. *Lawlor*, 208 U. S., 274, 28 Supreme Court Reporter, 301.

Since the decision of the Circuit Court of Appeals in this case reported in 148 Federal Reporter, p. 939, the Circuit Court of Appeals of the 3rd Circuit has decided two cases involving trusts or combinations and its decisions therein are in accord with this line of authorities:

Jayne v. *Loder*, 149 Fed. R., 21, a case of a combination between manufacturers, jobbers and retailers.

Wheeler-Stenzel Co. v. *National Window Glass Jobbers Assn.*, 152 Fed. R., 864, a case involving a combination of jobbers worked out through a corporation formed for the purposes of negotating sales of goods to them.

The Circuit Court of Appeals in the 5th Circuit had decided a case in which was cited with approval the decision of the Circuit Court of Appeals in the 6th Circuit in this case:

McConnell v. *Camors-McConnell Co.*, 152 Fed. R., 321.

The Circuit Court of Appeals of the 6th Circuit has also re-examined the questions in this case and extended the application of the principles involved in this case in *Park & Sons Co.*, v. *Hartman*, 153 Fed. R., 24.

The state courts have with great unanimity held combinations like that under discussion to be illegal. We select a few with provisions in the agreement which bear resemblance to those of the wall paper trust for citation here. Many others will be found at pages 20 to 23 in the brief for the defendants in error before the Circuit Court of Appeals in this case, which is attached and made part of the answer to the petition for *certiorari*, and now on file in this case.

Finck v. *Granite Co.*, 187 Mo., 244.

Pocahontas Coke Co. v. *Powhatan Coal & Coke Co.*, 60 W. Va., 508; 56 S. E. R., 264.

Hastings Industrial Co. v. *Baxter*, 102 S. W. Rep., 1075.

American Handle Co. v. *Standard Handle Co.*, 59 S. W., 709 (Tenn.).

Cumming v. *Union Blue Stone Co.*, 164 N. Y., 401, 404-6.

Cohen v. *Berlin & Jones Envelope Co.*, 166 N. Y., 292, 300-304.

Wheeler-Stenzel Co. v. *National Window Glass Jobbers' Assn.*, 152 Fed. R., 864 (C. C. A. 3d Cir.).

The above are instances where those in the combination retain control of their own business but form a corporation to, or through which sales are made, or through which purchases are made of all the product made by or merchandise dealt in by the conspirators. There are also cases like the above where the control is exercised by a corporation owning the stock of the corporations taken into the combination. Among these may be mentioned:

Northern Securities Co. v. *U. S.*, 193 U. S., 197.
Burrows v. *Interborough Metropolitan Co.*, 156 F. R., 389.
Southern Electric Securities Co. v. *State*, 44 So. Rep., 785 (Miss., 1907).

Other cases holding illegal a combination effected through a corporation formed for the purpose of taking over, owning and operating or closing down competing plants, are the following:

Distilling Co. v. *People*, 156 Ill., 448.
Harding v. *Blue Coat Co.*, 182 Ill., 551.
Richardson v. *Buhl*, 77 Mich., 632, 656 *et seq.*
Detroit Salt Co. v. *National Salt Co.*, 134 Mich., 103.

Other illustrative and leading cases are the following:

Straus v. *American Publishers' Assn.*, 177 N. Y., 473.
Nester v. *Brewing Co.*, 161 Pa. St., 473.
Vulcan Powder Co. v. *Powder Co.*, 96 Cal., 510.
Beechley v. *Mulville*, 102 Iowa, 602.
Bailey v. *Master Plumbers*, 103 Tenn., 99.
Klingel v. *Sharp*, 104 Md., 218.

V.

The Contract Between Plaintiff and Defendant, Under Which Arises the Account Sued on, is a Part of and Directly Connected With the Illegal Combination, and Hence, Unenforceable, and not Merely a Collateral or Independent Contract.

A consideration of the allegations of the third defense demonstrates that the contract, Exhibit 2 (Rec., p. 419), which was made between the plaintiff and the defendant, and also as a part of the same scheme between the plaintiff and every other jobber in the United States (Rec., pp. 396-397) was not collateral to the scheme or combination, or independent of it. The purposes of the combination were at least two-fold, namely, to effect a monopoly of both the manufacturers of and the trade in wall paper, and second, to enhance prices. Exhibit 2, in the light of the facts pleaded, when made, as it was, between the plaintiff and every other jobber and wholesaler in the country, was intended and calculated to effect both of these objects. The jobber undertook to buy all of his paper up to a certain amount, which amount was more than double what he had ever used, or was likely to use, from the plaintiff alone, and he also agreed not to sell at prices lower than those fixed by the plaintiff and to which every other jobber agreed, and the performance of these undertakings was a condition on which alone he could continue to receive goods from the plaintiff or its constituent companies representing the manufacturers of upwards of 98 per cent. of the wall paper manufactured in this country. The first of the above mentioned undertakings was equivalent to an agreement by the jobber or

wholesaler not to buy from any other person than the manufacturer. When made, as it was, by all the jobbers and wholesalers it assured the vendors in the combination a monopoly of the market. It prevented any of those within the combination from dropping out, for they would find no market outside.

The second agreement when likewise, as it was, entered into by all the jobbers and wholesalers, prevented competition among the jobbers and wholesalers, just as the execution of Exhibit 1 by all the vendors precluded competition among the latter. The fact that all wholesalers did enter into such agreements was all that made it possible for them to buy at the combination's advanced prices with the hope of a profit. It was the sugar coating that went with the compulsory threats set out in the answer, to the effect that unless such agreements were signed by all the jobbers they would be driven out of business from sheer inability to get goods.

These provisions of the contract, therefore, constituted the means by which the wholesale trade was brought into and made a part of the combination, carrying most effectually the iniquities of the combination, restraining and monopolizing the wall paper trade and commerce among the states, clear down to the ranks of the retailers and consumers.

It is clear that this is not a mere case of a sale by a monopoly or a trust to a third person and that the objection raised by the defendant is not the same as that which would be raised by an outsider purchasing from a trust.

So much is made in argument of the case of *Connolly* v. *Union Sewer Pipe Company*, 184 U. S., 540, as well as

of the cases decided upon the same principle, that it is proper to say a word or two further in connection with that case.

It merely decides that the objection that a corporation is a trust or monopoly arising and existing in violation of law, can not be urged by one who has voluntarily entered into a contract with it which is independent of and has no relation to its unlawful purposes, for the sake of avoiding such contract.

The converse, however, of the proposition is equally true, namely: that if the contract entered into is not independent of but is made in execution of and in furtherance of the unlawful purposes sought to be accomplished and as part of the scheme, no suit can be maintained by either party upon such a contract.

The case of *Connolly* v. *Union Sewer Pipe Company*, 184 U. S., pp. 548 and 549, brings out this distinction clearly. In that case Connolly defended solely upon the ground that the plaintiff company was a trust and his defense was overruled. He did not, as does the defendant in this case, allege or rely upon the fact that his contract with the Union Sewer Pipe Company was in itself illegal, or a part of the general plan to enhance prices and stifle competition. Had he done so his defense might have been successful, because the record shows that the contract actually made by Connolly with the Union Sewer Pipe Company had in it elements of illegality entirely independent of the illegal character of the plaintiff company. As pointed out by Mr. Justice Holmes, speaking for the court, in the recent case of *Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U. S., 390, 397:

> "The sale" (to Connolly as presented to this court) "was not so connected in its terms with the unlawful combination as to be unlawful."

He, however, based his defense solely upon the fact that the Union Sewer Pipe Company was a trust and sought to avoid the payment of the purchase-price of the goods on that ground alone. He largely relied upon the Illinois statute which recognized such defense but which was held unconstitutional.

All the other cases cited by plaintiff are founded upon well recognized distinctions which differentiate them from the case at bar. They fall under various classes, as follows, and must be distinguished from the case at bar:

1st. We must distinguish a sale made under and in pursuance of, and in carrying out, a contract void, because forbidden by statutes and the law prohibiting trusts and trust agreements, restraint of trade, enhancing prices, etc., and a sale made entirely outside as to a person who is not a member of the trust.

2d. We must distinguish between contracts unenforceable under the common law and cases arising where a statute has made contracts in restraint of trade or competition void; have forbidden them under penalty and have made them criminal.

3d. We must distinguish cases where the contract itself is legal, but the time or manner of making the contract alone is forbidden.

4th. We must distinguish cases arising under statutes enacted for a particular class of persons where the enforcement of the prohibition would frustrate the purpose of the statute.

5th. We must distinguish cases where, by agreement of the parties to the illegal transaction, the illegal transaction has been ended and money delivered by one person to a mere agent to be delivered to a third person, the delivery to the agent vesting title to the money or property in the other party.

6th. We must distinguish cases where the agreement which would be otherwise unlawful is held valid for the reason that the agreement is but a method upon the part of the owner of a legal monopoly of dividing up or dealing with that monopoly, as for instance, an agreement respecting patented or copyrighted articles.

Every case cited by the plaintiff comes within one or the other of these classes.

The fact that the consideration has all been executed on one side can not alter the matter. There have been many cases holding that there can be no recovery for goods sold and delivered under trust contracts, or other contract creating an illegal monopoly in restraint of trade. Among these are

Detroit Salt Co. v. *National Salt Co.*, 134 Mich., 103.
Arnot v. *Pittston & Elmira Coal Co.*, 68 N. Y., 558.
Unckles v. *Colgate*, 148 N. Y., 529, 538.
Clancy v. *Onondaga Fine Salt Mfg. Co.*, 62 Barb., 395, 405-7.
Houck v. *Brew. Assn.*, 88 Tex., 184.
Fuqua v. *Pabst Brew. Co.*, 90 Tex., 298.
Texas Brew. Co. v. *Templeman*, 90 Tex., 277.
Carriage Co. v. *Hatch*, 19 Tex. Civ. App., 120.

Other cases of executed consideration for which recovery was denied by reason of the contract being illegal be-

cause tending to create a monopoly, or in restraint of trade, are

Cravens v. *Carter-Crume Co.*, 92 F. R., 479 (C. C. A., 6th Cir.).
Bishop v. *Palmer*, 146 Mass., 469.

All the statutes relied on in this case expressly forbid the making of the contracts of which the one between the plaintiff and defendant, set out in the third defense, was a material step; expressly declare the contracts void; and expressly impose a penalty upon the making of them and expressly make them criminal.

Under these statutes such transactions and such contracts are just as illegal as gambling; as contracts to assist in the smuggling of goods; as contracts to deal in futures; as contracts to make and circulate counterfeit money; as the sale of liquor in violation of law; as contracts to assist in prostitution; or in any other way to violate criminal statutes, or in furtherance of such objects.

The cases in which recovery has been denied either of the contract price when suing on the contract or on the common counts ignoring the contract, are numerous. Some of the English cases at common law may be instanced.

If a contract of sale is illegal, there can be no recovery of goods sold in an action for goods sold and delivered. Per Ashhurst and Buller, JJ.

Alexander v. *Owen*, 1 T. R., 225.

A person who packs goods in a certain way to enable the buyer to smuggle them, can not recover in an action for goods sold and delivered.

Biggs v. *Lawrence*, 3 T. R., 454.
Waymell v. *Reed*, 5 T. R., 599.

No recovery can be had by an inn-keeper for provisions furnished to voters for a candidate, in violation of law.

Ribbans v. *Crickett*, 1 B. & P., 264, 266.

Nor by a printer for labor and materials in printing a book to which he does not affix his name, as required by statute, under a penalty.

Bensley v. *Bignold*, 5 B. & Ald., 335.
Marchant v. *Evans*, 2d J. B Moore, 14.

No recovery can be had by the seler for the value of bricks sold and delivered where the statute requires them to be of a certain size under a penalty.

Law v. *Hodson*, 11 East., 300.

So there can be no recovery by an unlicensed broker for work and labor.

Cope v. *Rowlands*, 2 M. & W. 149.

So no recovery can be had for use and occupation, after the lessor knows that the premises are used for purposes of prostitution.

Jennings v. *Throgmorton*, Ryan & M., 251.

Nor can recovery be had for the use of a conveyance hired to a prostitute to enable her to carry on her vocation.

Pearce v. *Brooks*, L. R., 1 Ex. 213.

So no recovery can be had for the value of butter sold by a farmer in firkins not branded as required by law under a penalty.

Foster v. *Taylor*, 3d Nev. & Man., 244; s. c. 5 B. & Ad., 887.

No recovery can be had on an implied contract to pay for coal sold and delivered without a ticket, as required by law, under a penalty.

Cundell v. *Dawson,* 4 C. B., 376, 397, 400.
Little v. *Poole,* 9 B. & C., 192, 199-203.

In America the cases are to the same effect.

A recovery can not be had by one privy to the unlawful design for services rendered in procuring execution of an illegal contract. See especially what is said in *McMullen* v. *Hoffman,* 174 U. S., 639, bottom of page 655.

Gibbs v. *Gas Co.,* 130 U. S., 396, 412.
Irwin v. *Williar,* 110 U. S., 499.
McMullen v. *Hoffman,* 174 U. S., 639.
Embry v. *Jemison,* 131 U. S., 336, 348.
Miller v. *Ammon,* 145 U. S., 421, 427.

One who has actively participated in an attempt to violate the law or public policy can not recover for the price of articles sold.

Hanauer v. *Doane,* 12 Wall., 342.
Sprott v. *U. S.,* 20 Wall., 459.
Kohn v. *Melcher,* 43 Fed., 641.

The state decisions are to the same effect.

In an action of assumpsit on the common counts for work and labor performed under an illegal contract after it had been rescinded it was held that no recovery could be had for value parted with under the illegal contract.

Peck v. *Burr,* 10 N. Y., 294, 297-300.
Johnston v. *Dahlgren,* 166 N. Y., 355, 358.
Brinkman v. *Eisler,* 40 N. Y. St., 865, 866.

Peck v. *Burr* contains a clear cut statement of the law. If the contract be illegal there can be no recovery under an implied contract.

Berka v. *Woodward*, 125 Cal., 119, 120, 121.
Smith v. *Albany*, 61 N. Y., 444.
Finn v. *Donohue*, 35 Conn., 216, 217, 218.

In a case already cited of *Bishop* v. *The American Preserving Co.*, 157 Ill., 284, 311-315, 320, an illustration is given of how far courts will go in leaving parties to a trust agreement where they find them. Bishop sold his stock and plant to the American Preservers Company, which was a trust, and gave it a bill of sale, receiving in return certificates for 331 shares of stock. It put him in charge of its plant as agent. He attempted to rescind and the company sued in replevin. It was held that the whole thing was illegal and the court would leave the parties where it found them. The maxim *in pari delicto* applied between the immediate parties to an illegal contract.

No recovery can be had on the common counts if the contract be illegal although fully executed.

Pike v. *King*, 16 Iowa, 49, 52.
Meader v. *White*, 66 Me., 90, 92.
Dodson v. *Harris*, 10 Ala., 566, 569.
Trowert v. *Decker*, 51 Wis., 46, 47.
Simpson v. *Nicholls*, 3 M. & W., 240, 243-4.
Stewart v. *Thayer*, 170 Mass., 560, 562-3.

Many other cases to the same effect are to be found at pages 31 to 34 of the brief in the Circuit Court of Appeals filed in this case with the answer to the petition for writ of *certiorari*.

These cases show that wherever and in whatever form the question has arisen, whether for goods sold and delivered, for money loaned, services rendered, the decisions have been uniform, that no recovery can be made on an implied contract where the express contract is illegal and the goods sold, the money loaned, or the services performed under and in pursuance of and in furtherance of an illegal contract.

Some of the cases, including *Connolly* v. *Union Sewer Pipe Company,* use language to the effect that a recovery may be had where the plaintiff is not obliged as part of his own case to disclose the illegal contract. While that may be, and undoubtedly is in some cases a good guide for determining whether the contract sued on is collateral or incidental to or a part of the illegal contract or not, it is not the only test nor is it so held to be where the question has arisen. While many cases might be cited to this effect the decisions of the Supreme Court of the United States are controlling.

As said in *Coppell* v. *Hall,* 7 Wall., 542, at page 558:

> "Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent of the defendant can neutralize its effect."

See also *McMullen* v. *Hoffman,* 174 U. S. 639, at p. 665, and the leading case of *Armstrong* v. *Toler,* 11 Wheat., 258, at p. 274.

VI.

A Direct Proceeding by the State or Federal Authorities to Have the Plaintiff Declared a Trust or Combination Within the Meaning of the Anti-Trust Law is not Necessary Before a Valid Defense to a Suit on the Illegal Contract can be Set Up.

In the courts below it was argued upon behalf of plaintiff that whether the plaintiff was a trust or not must be determined in a direct proceeding and not collaterally in an action by it for the price of merchandise sold. The argument was based upon the erroneous assumption of counsel that the defense was one based solely upon the fact that the plaintiff was a trust, and reliance for this branch of the argument was had by counsel upon the decision of Judge Kohlsaat in *Lafayette Bridge Co.* v. *City of Streator*, 105 F. R., 729. This case is not really applicable because it applies only to provisions in statutes by which persons outside the trust and whose contract with the trust is not tainted with any illegality may defend against any action brought by a trust, upon the ground that the plaintiff is a trust. It has no application where, as in the case at bar, the defense is not interposed by a third person but by the party who entered into an illegal contract, and the suit is on such contract.

As has been stated, this action is not apparently on the contract which is a trust agreement, but under the short form allowed by the code on an account for goods sold and delivered, But from the defense under consideration it appears and is admitted that, the prices charged in the account are the prices fixed in the agreements including

the agreement for the sale of the wall paper, that the account arises under these agreements and that these agreements are void. This being so, the action is not one to recover the price of goods sold to third persons by a trust under a contract for the purchase and sale of goods, but to recover from a person who was a party to the illegal agreement by force of the illegal agreement. It is, therefore, clear that the facts stated in the third defense constitute a valid defense to an action for the contract price.

In the recent case of *Bement* v. *National Harrow Company*, 186 U. S., p. 70, Mr. Justice Peckham said, in reference to a similar contention, pp. 87-88:

> "Plaintiff contends in the first place that only the Attorney-General of the United States can bring an action under the statute (Sherman Act), excepting that by Section 7 of the act any person injured in his business or property, as provided for therein, may himself sue in any Circuit Court of the United States, in the district in which the defendant resides or is found. Assuming that the plaintiff is right so far as regards any suit brought under that act, we are nevertheless of opinion that any one sued upon a contract may set up as a defense that it is a violation of the act of Congress, and if found to be so, that fact will constitute a good defense to the action.
>
> "The first section of the act provides that 'every contract, combination in the form of trust, or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal.' Every person making such a contract is deemed guilty of misdemeanor, and on conviction is to

be punished by fine or by imprisonment, or both. As the statute makes the contract in itself illegal, no recovery can be had upon it when the defense of illegality is shewn to the court. The act provides for the prevention of violations thereof, and makes it the duty of the several district attorneys, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations, and it gives to any person injured in his business or property the right to sue, but that does not prevent a private individual when sued upon a contract which is void as in violation of the act from setting it up as a defense, and we think when proved it is a valid defense to any claim made under a contract thus denounced as illegal."

Judge Kohlsaat's decision even applied to such actions as were then in contemplation by him seems contrary to the weight of authority.

Ford v. *Chi. Milk Ship. Assn.*, 155 Ill., 166.
Nat'l Lead Co. v. *Grote Paint Store Co.*, 80 Mo. Apps., 247, 265.

VII.

THE CONTRACT BETWEEN THE PLAINTIFF AND THE DEFENDANT, EVEN WHEN CONSIDERED SEPARATELY FROM THE AGREEMENTS BETWEEN THE MANUFACTURERS AND PLAINTIFF, WAS ONE IN RESTRAINT OF TRADE, SO AS TO DEBAR THE PLAINTIFF FROM RECOVERING FOR GOODS SOLD AND DELIVERED UNDER IT TO THE DEFENDANT.

Counsel for the plaintiff insist on contending that the gravamen of the third defense is, that the defendant was

the victim of the plaintiff or trust and was not a party to the illegal agreement or combination. We beg to point out, however, that while the defendant apologizes for entering into the illegal combination on the ground that it was forced to do so, as probably many of the manufacturers were who certainly were parties to the trust, nevertheless, as has been shown, the contracts, which were entered into between the manufacturers and the plaintiff, between the jobbers and the plaintiff, and between the quantity buyers and manufacturers, were parts of one general scheme to restrain trade, prevent competition, enhance prices, to fix a standard of price to the public or consumer, etc., in violation of the Sherman Act, the New York Statutes and the Ohio Statute, commonly known as the Valentine Act, above referred to.

While the defendant admittedly was not one of the original conspirators, yet by entering, with all the other jobbers in the country, into the contracts which the original conspirators outlined for them to make, containing the express agreements with respect to prices and with respect to dealing elsewhere, it thereby became itself a part of the conspiracy.

The answer distinctly states, after setting forth in substance the various contracts entered into between the different parties, including the plaintiff and the defendant, and the plaintiff and every other jobber, and the means adopted to bring about such results, and objects sought to be accomplished thereby, the following:

> "Each and all of the provisions of said contract and agreement between said members of said combination and each other; *between said so-called vendors and said plaintiff; between said*

members of said combination and said plaintiff and the so-called jobbers; between the members of said combination and trust and said plaintiff and the so-called road or quantity buyers, are each and all contrary to the provisions of the statutes of the state of New York," etc. (Rec., p. 399).

In view of these allegations and those which precede it, it is difficult to see how the plaintiff on demurrer can deny that the defendant was a party to the illegal combination. Certainly the pleader intended to make it appear so and certainly it was. Yet ignoring the allegations of the third defense of the answer which the demurrer admits; ignoring the allegation that an agreement identical with Exhibit 2 was entered into by the plaintiff with *every other jobber* of the first, second, and third class in the United States, and that an agreement identical with Exhibit 3 was entered into by the manufacturers on every sale to every other wholesaler or "quantity buyer" who were not classed as jobbers, and that these agreements were expressly contemplated and provided for in the agreements between the manufacturers and plaintiff, and ignoring the allegations that the schedule of "list prices" and discounts attached to Exhibits 2 and 3 allowed all jobbers, wholesalers and quantity buyers, [illegible] the identical schedules fixed upon between the manufacturers and the plaintiff in their agreements (Exhibit 1), as well as all provisions as to equalizing of freights, conditions and the forms the contracts were to assume—ignoring all these most material facts—counsel for plaintiff take up Exhibit 2 as if it stood alone, was the only contract made and was a

simple agreement between a vendor of wall paper and a vendee, as to the sale of a year's supply of goods.

Having thus taken the contract, and isolated it from everything else, they proceed to argue first, that its restrictions were reasonable at common law in the case of a sale of goods to be imposed by a vendor on a vendee; second, that being reasonable at common law it was not a restraint on commerce between the states and otherwise within the terms of the state and United States statutes prohibiting such restrictions, that the statutes are not supposed to cover such cases; and third, that even if illegal the illegal provisions are severable and do not prevent the enforcement of the legal provisions.

Such an argument begs the whole question at issue. The elements ignored are the elements which, conceding all that is claimed in reference to Exhibit 2, the contract relied upon, if this stood by itself, render it illegal and unenforceable. This is true, although the defendant be considered as not a party to the general illegal scheme or combination and only a party with the plaintiff and jobbers to that feature of the scheme which involved the disposition of the merchandise to which plaintiff by its contracts with the manufacturers had acquired title.

Treating the case in this narrow view, the illegality of the contract fixing the price at which defendant sold the goods, precludes a recovery from the defendant, a party to such contract, and is enforcing an illegal agreement. For, when taken in connection with the other contracts, signed by all other jobbers, wholesalers and quantity buyers—the stipulations as to prices, etc., at which they were to dispose of the goods purchased were (1) unreasonable even at common law; (2) whether reasonable or

unreasonable, were in violation of the Sherman Act and the state statutes; and (3) are not severable as one of two or more promises resting on a legal consideration; but, by reason of the form they take, were conditions precedent to any promise of the plaintiff and taint and render illegal the entire consideration by virtue of which the defendant agreed to pay *any price for the goods.*

The contracts which the defendant, in common with every other wholesaler and jobber in the country, signed (Exhibit 2, Rec., p. 419), bound the defendant and every other jobber to buy exclusively from the plaintiff. This was disguised by the provisions that the jobber "will purchase the entire requirements of the jobber" up to a certain amount; but this amount is averred in the answer to have been "at least double the entire amount purchased by the jobber during the preceding year," and "more than by any possibility could be needed by such jobber" (Rec., p. 395).

In the second place, as to credit limitations, deliveries, equalization of freight rates, discounts from list prices terms of payment, settlements, dates of invoices, etc., they impose and follow the provisions of the contract between the manufacturers and the plaintiff (Exhibit 1). Then follows (Exhibit 2, Rec., p. 419) this provision, likewise in accordance with (Exhibit 1, Rec., p. 406, 407):

> "Third. Attached hereto, marked (B), is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers, and also a statement of discounts allowed to such customers other than jobbers for quantity purchases, together with the terms of credit and freight allowance to which such customers are entitled.

"It is an essential condition of this agreement that the jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in Exhibit B, the intent hereof being to assure the company against the use by the jobber of this agreement to undersell the company.

"The prompt performance by the jobber of the provision of this agreement as to payment and *otherwise* is a *condition precedent* to exacting the continuous performance of said agreeemnt by the company" (Rec., p. 419-420).

Every jobber in the United States signed this contract with plaintiff. No jobber could get goods *at all* from anybody unless he did.

Every wholesaler who was not a jobber but was a "quantity buyer" signed at the time he purchased any goods from a manufacturer, who had agreed with the plaintiff to sell said goods, a contract (Exhibit 3, Rec., p. 433), containing a similar provision:

"In consideration of your having sold us wall paper, etc., at list prices and at quantity discounts as per following schedule (here follows schedule) we hereby agree not to sell any of such goods to others on terms better or more favorable than those specified in the above schedule or lower than said list prices, and our faithful performance of this agreement is *condition precedent* to the filling of our order.

"The intent hereof is to protect you fully against being undersold by us among customers to whom you do not allow quantity discounts."

In the face of these contracts and the allegations of the answer in reference thereto, how idle it is to treat this as a case where a vendor, to protect his business, imposes a reasonable restraint on the vendee when he sells him property, real or personal?

What does it avail to cite the contract between Connolly and the Union Sewer Pipe Company, which contained similar provisions, when those provisions were not relied upo as a defense, not pleaded as such, no showing made that any other purchaser signed a similar contract, no allegation made that it was in pursuance of a plan to create a monopoly, fix prices, restrain trade, etc., and when the Supreme Court in its opinion, not only *does not mention it*, much less pass upon it?

Why quote part of the opinion in *U. S.* v. *Addyston Pipe & Steel Co.*, 85 F. R., 271, which refers to contracts at common law which were reasonable, and ignore what Judge Taft especially pointed out as a distinguishing feature of such cases. In the foregoing cases, etc., "Where," says he, page 290—

> "Such relations exist between the parties, as already stated, restraints are usually enforceable if commensurate only with the reasonable protection of the covenantee in respect to the main transactions affected by the contract. But, in recent years, even the fact that the contract is one for the sale of property or of business and good will, or for the making of a partnership or a corporation, has not saved it from invalidity *if it could be shown* that it was only part of a plan to acquire all the property used in a business by one management with a view to establishing a monopoly. Such cases go a step further than those

> already considered. In them the actual intent to monopolize must appear. It is not deemed enough that the mere tendency of the provisions of the contract should be to restrain competition. In such case the restraint of competition ceases to be ancillary, and becomes the main purpose of the contract, and the transfer of property and good will, or the partnership agreement, is merely ancillary and subordinate to that purpose." (Citing numerous cases.)

The case at bar is like the case of *Cravens* v. *Carter-Crume Co.*, 92 F. R., 479. It appears from that case, p. 483, that—

> "The trial judge held at the conclusion of the evidence, that the contracts between the plaintiff, the National Mercantile Company and the Carter-Crume Company *were not* standing by *themselves* unlawful, but that when taken in connection with the other facts which had been shown, it appeared that they formed part of an unlawful combination in restraint of trade; that they were therefore contrary to public policy and could not be enforced. He therefore directed a verdict for defendant."

This holding of the court below was affirmed by the Circuit Court of Appeals, although the plaintiff had fully executed the contract on his part.

Two cases in California fully bring out the distinction sought to be enforced in this case.

Pacific Factor Co. v. *Adler*, 90 Cal., 110:

> "A contract by the terms of which the defendant agreed to give to the plaintiff the exclusive sale of grain bags or burlaps, up to a specified

quantity, to be under the defendant's control for a specified period, and agreed to accept for them the average price received by the plaintiff for all grain bags or burlaps sold by him, and the plaintiff agreed to sell them for a specified commission and to be bound to sell a specified quantity of them, is not upon its face void as being in restraint of trade or against public policy; but if it be shown that such contract formed part of a scheme of the plaintiff to establish a monopoly in grain bags, agreement is void."

So held in action for damages for failure to deliver bags as agreed.

Santa Clara Mill & Lumber Co. v. *Hayes,* 76 Cal., 387, *syllabus:*

"The plaintiff and the defendants, who were each manufacturers of lumber, entered into a contract by the terms of which the defendants agreed to make and deliver to the plaintiff during the year 1881, two million feet of lumber at $11 per thousand feet, and further agreed not to manufacture any lumber during such period for sale within a specified territory, except under the contract and to pay the plaintiff $20 per thousand feet for any lumber manufactured and sold to parties other than the plaintiff. Similar contracts were made by the plaintiff with other lumber dealers, and its sole object and consideration in entering into such contracts was to form a combination for the purpose of increasing the price of lumber, limiting the supply, and giving it the control of the lumber market within the territory specified.

"*Held:* That the contract was in restraint of trade, it being indivisible was invalid in its entirety."

Page 392:

"Plaintiff had an undoubted right to purchase any or all of the lumber it chose, and to sell at such prices and places as it saw fit, but when as a condition of purchase it bound its vendor not to sell to others under a penalty, it transcended a rule the adoption of which has been dicated by the experience and wisdom of ages as essential to the best interests of the country and as necessary to the protection alike of individuals and legitimate trade."

Page 393:

"It is claimed by appellant that the contract is divisible and the first part (*i. e.*, to sell) can stand though the latter be illegal. If the whole vice of the contract was embodied in the promise of the defendants not to sell lumber to other persons, the illegality would lie in the promise alone and it might be contended with great force that this promise was divisible from the agreement to sell. Under the findings of the court, however, the illegality inheres in the consideration.

"The very essence and main-spring of the agreement, the illegal object, was to form a combination, etc. * * * The good can not be separated from the bad or rather the bad enters into and pormeates the whole contract so that none of it can be said to be good and, therefore, the subject of an action."

See also:

Straus v. *Amer. Pub. Assn.*, 85 App. Div. (N. Y.), 446, 450; affirmed 177 N. Y., 473.

Detroit Salt Co. v. *Nat'l Salt Co.*, 134 Mich., 103, 120.

Finck v. *Granite Co.*, 187 Mo., 244, 269:

> "If this contract in suit stood alone it would undoubtedly be sustained, but it did not stand alone. It was one of five others, all of which were links and necessarily links in the illegal combination which rendered them illegal."

The case of *Bement* v. *National Harrow Co.*, 186 U. S., p. 70, clearly brings out the point for which we are now contending. In that case the licensee of certain patents owned by the National Harrow Company sought to avoid the terms of his license upon the ground that certain provisions therein, which affected the sale and prices at which the merchandise was to be sold, were in violation of the Sherman Act.

The case came to the Supreme Court on error to the Supreme Court of the State of New York and there had been certain findings of fact by the referee in the court below as to the validity of the license contract, but there had been no finding of fact that any other persons than the defendant had entered into such contract or contracts of a similar kind.

Nevertheless in the Supreme Court the plaintiff in error, defendant below, attempted to rely upon the existence of similar contracts with other licensees as showing an illegal combination within the act of Congress. The Supreme Court held that it was not at liberty to go behind the findings of fact of the referee in the state court or from the record find facts in addition to those found by the referee; but, on the contrary, had to pass upon the case as if the license contracts referred to in the opinion and records as Exhibits A and B were the only contracts of that sort in existence.

So viewing them the court held in effect that, as the object of the patent laws was a monopoly any conditions not in their very nature illegal imposed by the patentee on the licensee would be upheld by the courts and could not be construed as being within the purview of the Sherman Act.

Nevertheless the court was very careful to refrain from stating what would have been its decision had the other facts urged by the plaintiff in error been found to be true by the referee, and carefully refrains from passing upon the effect of such findings if they had been made. On the contrary, the clear intimation from a reading of the opinion is that if the facts urged by the plaintiff in error had been properly before the court the conclusions reached by the court would have been different. Mr. Justice Peckham for the court, at page 85 said:

> "The omission of the referee to find from the evidence that the contracts A and B were a continuation of former contracts held to have been void, and that there were in fact other manufacturers of harrows who had entered into the same kind of contracts with plaintiff as those denominated A and B, and that there was a general combination among the dealers in patented harrows, to regulate the sale and prices of such harrows, furnishes no grounds for this court to assume such facts. The contracts A and B are to be judged by their own contents alone and construed accordingly."

And again, page 87:

> "In the absence of any finding as to the escrow agreement having been signed by others, it must be regarded as unimportant, and we are brought

back to the question whether these contracts or licenses, A and B, irrespective of any contracts not found by the referee as in any way connected with, or forming a part thereof, are void as a violation of the act of Congress."

Finally after discussing the nature of a patent monopoly and the application of the Sherman Act and the decisions of the Supreme Court thereunder, to rights acquired from a patentee, he concluded his opinion as follows, page 94:

"It must, however, be conceded that the escrow agreement above set forth looks to the signing, by the parties mentioned therein, of contracts similar to those between the parties to this suit, designated A and B, and containing like conditions relating to the patents respectively, owned by such parties. But there is no finding by the referee that such contracts were in fact entered into by those other parties nor that they constituted a combination of most, if not all, of the persons or corporations engaged in the business concerning which the agreements between the parties to this suit were made. If such similar agreements had been made, and if, when executed, they would have formed an illegal combination within the act of Congress, we can not presume for the purpose of reversing this judgment, in the absence of any finding to that effect, that they were made and became effective as an illegal combination. *As between these parties, we hold that the agreements A and B actually entered into were not a violation of the act. We are not called upon to express an opinion upon a state of facts not found.*"

In the case at bar under the allegations of the third defense, the contracts—Exhibits 2 and 3—were not only entered into with the defendant but also with all other wholesale dealers and quantity buyers of wall paper and constituted a combination together with the manufacturers who had entered into the contracts (Exhibit 1) with the plaintiff of most, if not all, of the persons engaged in the business, viz., wall paper business, concerning which the agreements between the parties to this suit were made. In other words, the elements which are lacking in the case of *Bement* v. *The National Harrow Company*, by reason of the findings of the referee are present before this court by virtue of the allegations of the third defense and the admission by the plaintiff of their truth.

It is this distinction that differentiates this case from that and also, even at common law, distinguishes the case at bar from all such cases as are set out in the brief of counsel, such as:

Amer. Strawboard Co. v. *Haldeman P. Co.*, 83 F. R., 619.
Hitchcock v. *Anthony*, 83 F. R., 779.
Navigation Co. v. *Winsor*, 20 Wall., 64.
Dunlap v. *Gregory*, 10 N. Y., 241.
Hodge v. *Sloan*, 107 N. Y., 244.

In all of these cases as well as the other cases, the restrictive covenant was held to be reasonable and not to go beyond or to have any other purpose than the legitimate protection of the vendor. There was no evidence that there was any combination to form a monopoly or enhance prices, or restrain trade. No one was party to the contract except the vendor protecting his own property.

The facts which appear in the third defense, however, as held in the California cases, above cited, this contract and its respective provisions were illegal and void. Being illegal and void, while at common law they furnished no basis for a cause of action, or a criminal prosecution, they nevertheless constituted a defense to any suit brought to enforce them.

U. S. v. *Addyston Pipe & Steel Co.*, 85 F. R., 271-279.

In the brief for plaintiff in error, stress is laid upon the decision of *Park & Sons Co.* v. *National Wholesale Druggists' Assn.*, 175 N. Y., 1, and similar cases from which it is contended that the courts in New York at least have held to be legal provisions similar to those in the contract between plaintiff and defendant even when made between combinations of manufacturers or dealers.

Park & Sons case, however, and other similar cases rest upon a foundation which has no application to the case at bar. As said by Judge Haight in his opinion in that case:

> "We must bear in mind that the goods are covered by patent rights and trade-marks, which give the proprietors the exclusive right of specifying prices at which the articles shall be sold, and following this, the right also to require dealers to maintain the prices specified."

And it was said by Chief Judge Parker in that part of his opinion quoted by counsel for plaintiff in their brief below:

> "It must be borne in mind steadily that it is settled by authority that the proprietor of patent medicines has the right to fix the price at which

> his articles shall go to the consumer, and a druggist who takes his article for sale under an agreement that he will maintain the price is liable to respond in damages if he violates the contract."

Counsel for plaintiff notwithstanding these statements by the judges rendering the opinion of the court, claimed below that the court did not base its decision upon the theory that the goods involved in that case were proprietary articles.

That the case, however, is rested entirely upon that theory is conclusively shown by the later case, decided by the same court (*Straus* v. *Amer. Pub. Assn.*, 177 N. Y., 473, 476), in which a similar combination of book publishers was held to be illegal although ostensibly limited to the fixing of prices for copyrighted books, when it appeared that, in reality, it was used for enforcing the sales at fixed prices of books not copyrighted. In that case it was said by Chief Judge Parker, at page 476, after quoting from the opinion of Mr. Justice Peckham, delivering the opinion of the court in *Bement* v. *National Harrow Co.*, 186 U. S., at page 91:

> "That reasoning is employed as to patent rights. It is equally applicable to copyrights, the protection of which was perhaps the leading object of the association and agreement attacked in this action. And it points to the principle underlying the decision in the Park & Sons Co. case (175 N. Y., 1) upon which defendants apparently rest their claim that the judgment of the Appellate Divison should be reversed. But there is a feature in this case not to be found in that one, and which requires a different judgment than the one rendered therein. * * * A com-

bination creating a monopoly of the sale of books *not* protected by copyright offends against the law of this state as much as if it related to blue stone (164 N. Y., 401) or to envelopes (166 N. Y., 292) and according to this complaint, which must be accepted as true on this review, such an outcome is not only possible but probable. But it is not of moment whether such a result is probable or not, for the test to be applied is, What may be done under the agreement?"

That a combination between jobbers is one as illegal as a combination between manufacturers is shown by the recent decision of the Circuit Court of Appeals for the Third Circuit, the opinion being rendered by Judge Gray.

Wheeler-Stenzel Co. v. *National Window Glass Jobbers' Assn.*, 152 F. R., 864.

While we thus submit, in answer to the contentions of plaintiff, that the contract between plaintiff and defendant was illegal, considered simply as part of a scheme between the plaintiff and all the jobbers of the country, because of the features in this and all other contracts with jobbers to enhance prices and enforce plaintiff's monopoly, yet we urge that our main contention be not lost sight of, that these contracts were but part of a greater scheme including the manufacturers of ninety-eight per cent. of the wall paper of the country, under which the plaintiff was but a cover for the illegal designs of the manufacturers, who were the real parties to the contracts with the jobbers. When the defendant contracted with the plaintiff to uphold the enhanced prices, it, in fact, contracted with the combined manufacturers, who did, in fact, sell it the goods pursuant to the real agreement or

conspiracy, and defendant, in common with all other jobbers, thereby made itself a party to the conspiracy and undertook to further and carry out its illegal ends.

VIII.

Even if the Restrictions Contained in the Contracts Were Reasonable at Common Law, yet, Under the Federal and State Statutes, Whether Reasonable or Unreasonable, They Were Void and Non-enforceable.

The contracts were signed in New York, and provided for the delivery of the goods f. o. b. cars at New York or Philadelphia, or at any other place the plaintiff or manufacturers chose, subject, however, in the latter event to an equalization of freights to either of said cities.

The goods were to be shipped to the jobbing houses of the different jobbers or wholesalers, and in the case of the defendant, to Cincinnati, Ohio. From that point they were to be sold by the defendant in Ohio and other states of the Union.

A provision, therefore, that no wall paper should be purchased from anyone but the plaintiff and should be sold when purchased only at certain prices, which provision was applied and enforced against every purchaser of wall paper, systematically and uniformly, certainly was a contract in restraint of trade or commerce among the several states, and an attempt to monopolize a part of the trade or commerce among the several states, and, so far as the contract fixed the prices at which goods purchased by the defendant were to be sold in Cincinnati and other

cities, for delivery in Ohio and such other states, came within the Sherman Act, as well as the Ohio statute commonly known as the Valentine Act (93 Ohio Laws, p. 143).

The contract also came within the New York statute, as it was entered into and in part performed there, and the New York statute is like the Federal statute.

It is not claimed that this contract did not, to some extent, restrain commerce between the states. It certainly did do so, and it had also for its object the creation of restrictions in trade, the increasing of the prices of merchandise, the fixing of a standard, or figure, whereby the price of merchandise to the public or consumer should be controlled or established, the prevention of competition and the other purposes denounced in the Ohio statute.

The contention, however, is made, that these statutes are not intended to prevent reasonable restrictions and that, therefore, the restrictions in the contract are to be upheld, despite the State and Federal prohibitions against contracts whose object and purpose are such as those above stated.

The courts below found that the combination and conspiracy under review in this case was unreasonable and illegal at common law, but whether reasonable or not, or void at common law or not, the decisions of this court leave no room for doubt that the agreements are interdicted by the Sherman Act and the state statutes.

If the tendency of these provisions is to restrain commerce or accomplish any of the purposes denounced in the statute, the motive in entering into them or the reasonableness of the provisions is immaterial.

U. S. v. *Trans-Missouri Freight Assn.*, 166 U. S., 290, 328.

U. S. v. *Joint Traf. Assn.*, 171 U. S., 505, 568.
Loewe v. *Lawlor*, 208 U. S., 274; 28 Supreme Court Reporter, 301, 304.

The only question that is open in any case is as to whether or not the direct or necessary effect of the contract is to restrain commerce or to monopolize any part of the commerce between the states, as by fixing prices, preventing competition, or fixing a standard of price, etc. all of which are interdicted by both Federal and State statutes. From what has been heretofore said, that the necessary effect of the combination in question, and the contracts entered into by the plaintiff with the different jobbers and wholesalers, was to do these things which are forbidden, can not be questioned.

IX.

The Illegality is not Partial and Separable, but Vitiates and Invalidates the Whole Contract.

Counsel for plaintiff in error, while treating the contract between plaintiff and defendant as one wholly separate and independent contract between one manufacturer or vendor, and one customer, contend that, even if certain stipulations in that contract prohibiting the defendant from selling any of the merchandise purchased from the plaintiff at lower prices than those specified in the schedule annexed, and prohibiting the purchase of merchandise outside the trust, be illegal, the only effect of such illegality is to nullify these provisions and not to prevent plaintiff from recovering on the separable promise of the defendant to pay for the goods which he actually received

and kept. In support of this contention the familiar doctrine is invoked that. where one of two promises given upon one consideration is illegal and the other promise and the consideration are legal, the legal promise can be enforced by the person who has furnished the legal consideration and who in the action exacts the performance of only that which is legal, waiving the performance of that which is illegal.

This principle is sought to be applied by contending that in consideration of certain merchandise supplied by the plaintiff, the defendant promised, among other things, (1st) to buy a certain amount of merchandise from the plaintiff; (2d) to pay certain prices therefor; (3d) not to sell the same at less than certain fixed prices; (4th) and not to buy elsewhere; and that although numbers 3 and 4 may be void, yet as the consideration for 1, 2, 3, and 4 was valid, and 2 was also valid, 2 can be enforced against the defendant. While not disputing the principle sought to be invoked, its application to the case at bar can not be supported for several reasons: In the first place, as said in the case of *Santa Clara Mill & Lumber Co.* v. *Hayes*, 76 Cal., 387, the illegal object, the very essence and main-spring of the agreement, was to carry out a combination, and the good can not be separated from the bad, that is, the illegal object enters into and permeates the whole contract so that none of it can be said to be good; in the second place, the contract, on its face, shows the consideration for all the promises of the defendant to have been illegal. While agreeing to sell the entire requirements of the defendant in the business of selling wall paper for the year ending July 1st, 1899, at certain prices, less discount, it did so only upon

the "essential condition" or "condition precedent" that the defendant would not, directly or indirectly, sell, or offer for sale, any of the merchandise so purchased, below certain standard prices, and agreed to supply wall paper to the defendant only upon the condition precedent that the defendant would continuously perform that contract.

The legal effect, therefore, of this contract in the case at bar, was to render the consideration for all the defendant's promises illegal, for the promise of the plaintiff to sell paper to the defendant, which was the consideration for the plaintiff's promise to buy the paper and to pay certain prices therefor, was made upon a condition embodied in it which was illegal. The plaintiff clearly said: upon condition that you will not sell any goods that I supply you below certain prices, and upon condition that you, in common with all other jobbers, will enter into and become a part of the illegal conspiracy and monopoly, carrying out its ends in at least two ways by agreeing to buy, and in fact, buying from no one else, and agreeing to sell, and in fact, selling at trust prices fixed by me, on such conditions alone I will supply you with the goods.

The element of illegality, therefore, is involved in the consideration which passed from the plaintiff, as well as in one of the promises made by the defendant. The illegal stipulation is enforced by the enforcement of any of the promises of the defendant, since those promises are only supported by the illegal stipulation.

The language of Justice Holmes, in the opinion in *Cincinnati Packet Co.* v. *Bay*, 200 U. S., 179, 185 (p. 89 plaintiff's brief), recognizes the distinction that we are urging here. He says there that the covenant relied upo to make the transaction illegal "is not the covenant sued

upon. It is not declared to enter into the consideration of the sale," and he speaks of it again as a "subordinate undertaking of the buyer." In the contract at bar the illegal provision is no subordinate undertaking but it is expressly declared by the contract to be not only a part of the consideration for the sale, but the condition upon which alone goods could be had.

In the third place, there is a well recognized exception to the principle invoked on behalf of the plaintiff in error and now under consideration, namely: that where one of the promises is illegal or objectionable, because it is for the performance of an immoral or criminal act, it is no severable so as to render the other promise, or promises, enforceable, but in such cases it will taint the entire contract and render it unenforceable in all its parts.

This exception is pointed out in one of the cases cited by counsel for plaintiff, *Erie Railway Co.* v. *Union Locomotive & Express Co.*, 35 N. J. L., 240. In the opinion in that case Chief Justice Beasley, after citing authorities, said at page 246:

> "These and other authorities which might be referred to, settle the rule, that the fact that one promise is illegal will not render another disconnected promise void. The doctrine will not embrace cases where the objectionable stipulation is for the performance of an immoral or criminal act, for such an ingredient will taint the entire contract and render it unenforceable in all its parts by reason of the maxim *ex turpi causa non oritur actio.*"

The same limitation to the doctrine is noted in an article in 17 Yale Law Journal, 338, 341 (March, 1908), on

the subject "Void, Illegal or Unenforceable Consideration."

The same distinction was noted in the case of *U. S.* v. *Bradley*, 10 Peters, 343, 360 *et seq.* Mr. Justice Story there said:

> "That bonds and other deeds may, in many cases, be good in part, and void for the residue, where the residue is founded in illegality, but not *malum in se*, is a doctrine well founded in the common law, and has been recognized from a very early period."

The same distinction is noted in the case of *Gelpcke* v. *City of Dubuque*, 1 Wall., 175, 221. The distinction is also noted in Hammon on Contracts, a work from which counsel for plaintiff quoted at length in his brief below. In Section 251*a* of that work the author says:

> "A distinction is to be noted between agreements which are illegal and agreements which are merely void—between agreements which the law will not aid, and agreements which the law desires to prohibit. This distinction comes out not in a comparative validity of the two, for both are void, but in the effect which their peculiar character imparts to collateral transactions. An illegal agreement vitiates all collateral transactions entered into in its furtherance, however innocent such transactions may be in themselves; but if an agreement is merely void, and not illegal, it is otherwise. Collateral transactions are not vitiated by the nullity. * * * Our present inquiry concerns the effect of illegality; and it may be laid down as a rule that the unlawfulness of a pending or contemplated transaction vitiates an otherwise lawful promise founded

upon it, so that no rights are created by the promise, or can result from it."

Reference is also made to Anson on Contracts, pp. 185, 208-210, of the 8th Ed., or 190, 213-215 of the 9th Ed., the language used in Hammon on Contracts being a condensed statement of that in Anson.

If, as plaintiff contends, the sole illegality of the contract between plaintiff and defendant lies in the covenants not to sell except at trust prices, and not to buy outside of the trust, these covenants are criminal in their nature. They are the promises whereby the defendant made itself a party to the illegal combination and agreed to carry out the purposes of that illegal combination. Those agreements were made criminal by statute. They were not merely promises which the law would not enforce, but they are those which the law seeks to prohibit. It, therefore, falls directly within the exception to the principle invoked, as it is a criminal agreement, and in such a case as is pointed out by the above authorities, the good can not be separated from the bad. In not one of the cases cited by plaintiff's counsel in his brief below on the subject of divisibility of covenants was one of the covenants illegal in the sense of being criminal or *malum in se.*

Mr. Justice Brewer, when Circuit Judge, and before the enactment of the Sherman law or the state statutes now under consideration, refused in *Burlington, C. R. & N. Ry. Co.* v. *North Western Fuel Co.,* 31 F. R., 652-657, on similar grounds, to apply the doctrine of divisibility of covenants when the evident purpose and necessary result of the contract was the building up on behalf of the promisee of a monopoly of the coal business.

Finally, contracts may be void, illegal and unenforceable even though there be no agreement by either party that is criminal. This follows from the immediate connection of the contract with the illegal purpose of one of the parties.

In Pollock on Contracts, pp. 351-354 (6th Ed.), Wald's Pollock's Contracts (3d Ed.), side pp. 484-485) it is said:

> "3. When the immediate object of an agreement is unlawful the agreement is void. * * *
>
> "4. When the immediate object or consideration of an agreement is not unlawful but the intention of one or both parties in making it is unlawful, then—
>
> "If the unlawful intention is at the date of the agreement common to both parties, or entertained by one party to the knowledge of the other, the agreement is void. * * *
>
> "Here it is necessary to consider what sort of connection of the subject-matter of the agreement with an unlawful plan or purpose is enough to show an unlawful intention that will vitiate the agreement itself. This is not always easy to determine. * * * We have in the first place a well marked class of transactions where there is an agreement for the transfer of property or possession for a lawful consideration but for the purpose of an unlawful use being made of it. All agreements incident to such transaction are void; and it does not matter whether the unlawful purpose is in fact carried out or not [*Gas Light & Coke Co.* v. *Turner*, 5 Bing. (N. C.), 666; in Ex. Ch. 6, *Ib.*, 324.] The later authorities show that the agreement is void not merely if the unlawful use of the subject-matter is part of the bargain, but if the intention of the one party so to use it

is known to the other at the time of the agreement." * * * [*Pearce* v. *Brooks*, L. R., 1 Ex., 213.]

Gas Light & Coke Co. v. *Turner* is a case of an action on covenants of a lease, with a second count on breach of a covenant to purchase 1,000,000 gallons of tar yearly. A plea to each count was sustained that the tar was sold and the building let for the express purpose of there drawing oil of tar, and that the building so demised was of a character in which the drawing of oil was prohibited under penalty by the statute 25 George III., c. 77.

One of the cases cited by Chief Justice Tindal in the case of *Gas Light & Coke Co.* v. *Turner*, is that of *Lightfoot* v. *Tenant*, 1 B. and P., 551.

In that case a plea was sustained to an action on a bond for the price of goods sold, that the goods were sold pursuant to an agreement and in order that they might be shipped to Ostend to be there shipped on board ships, which were not licensed to trade in the East Indies, to be carried by said unlicensed ships to Calcutta for sale clandestinely. By statute, all contracts made for the loading or supplying such ships with a cargo was penalized, and it was held that the statute was concerned with those only directly within the scope of the act, and that the contract or agreement set up in the plea was not directly within the scope of the act. Nevertheless, the sale of goods to one who would use them for supplying such ships with a cargo, was illegal. In the opinion, Chief Justice Eyre said:

"Very probably those who are remotely concerned in furnishing the supply may not be directly within the scope of the act. But it will not

follow that their contracts will be valid. * * But the man who sold arsenic to one whom he knew intended to poison his wife with it would not be allowed to maintain an action upon his contract. The consideration of the contract, in itself good, is there tainted with turpitude which destroys the whole merit of it. I put this strong case because the principle of it will be felt and acknowledged without further discussion. Other cases where the means of transgressing a law are furnished with knowledge that they are intended to be used for that purpose will differ in shade more or less from this strong case, but the body of the color is the same in all. No man ought to furnish another with the means of transgressing the law, knowing that he intends to make use of them. And it will seldom happen that this will be the whole for which he will have to answer. The man who knows that an illegal use is intended to be made of that which he is selling, will be thereby impelled to use his knowledge to make the contract more beneficial to himself and it may become his interest to stipulate for himself that the illegal use shall be made of the goods he sells; and so the illegal use may be the very gist of the contract. * * * It is essential to his views and it enters into the spirit of his contract that the goods shall be employed according to their destination."

In *Arnot* v. *Pittston & Elmira Coal Co.*, 68 N. Y., 558, 566, it was said:

"The plaintiff, however, contends that notwithstanding the illegality of the stipulation of the Butler Colliery Company not to sell coal to other companies, he is still entitled to recover for the

coal actually delivered to the defendant. The coal was, as found by the referee, delivered under the illegal contract. The purpose of the vendee was against public policy and the vendor knew it. This brings us straight to the question, whether the vendor, delivering goods under such a contract, can recover for the price. I think that under the circumstances of the present case, as found by the referee, he can not. If an absolute purchase had been made by the defendant of the Butler Coal Company of any specified quantity of coal, or even of all the coal which the Butler Company could produce, that contract would have been legal, notwithstanding that the object of the purchaser was to secure a monopoly and that the vendor knew it. He had a right to dispose of his own goods, and (under certain limitations) a vendor of goods may recover for their price, notwithstanding that he knows that the vendee intends an improper use of them, so long as he does nothing to aid in such improper use, or in the illegal plan of the purchaser. This doctrine is established by authority and is sufficiently liberal to vendors but—and this is a very important distinction—if the vendor does anything beyond making the sale, to aid the illegal scheme of the vendee, he renders himself *particeps criminis* and can not recover for the price."

In *Hanauer* v. *Doane*, 12 Wall., 342, Mr. Justice Bradley at page 349 says:

"Where to draw the precise line between the cases in which the vendor's knowledge of the purchaser's intent to make an unlawful use of the goods, will vitiate the contract, and those in which it will not, may be difficult. Perhaps it

follow that their contracts will be valid. * * But the man who sold arsenic to one whom he knew intended to poison his wife with it would not be allowed to maintain an action upon his contract. The consideration of the contract, in itself good, is there tainted with turpitude which destroys the whole merit of it. I put this strong case because the principle of it will be felt and acknowledged without further discussion. Other cases where the means of transgressing a law are furnished with knowledge that they are intended to be used for that purpose will differ in shade more or less from this strong case, but the body of the color is the same in all. No man ought to furnish another with the means of transgressing the law, knowing that he intends to make use of them. And it will seldom happen that this will be the whole for which he will have to answer. The man who knows that an illegal use is intended to be made of that which he is selling, will be thereby impelled to use his knowledge to make the contract more beneficial to himself and it may become his interest to stipulate for himself that the illegal use shall be made of the goods he sells; and so the illegal use may be the very gist of the contract. * * * It is essential to his views and it enters into the spirit of his contract that the goods shall be employed according to their destination."

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"Where to draw the precise line between the cases in which the vendor's knowledge of the purchaser's intent to make an unlawful use of the goods, will vitiate the contract, and those in which it will not, may be difficult. Perhaps it

> can not be done by exact definitions. The whole doctrine of avoiding contracts for illegality and immorality is founded on public policy. It is certainly contrary to public policy to give the aid of the courts to a vendor who knew that his goods were purchased, or to a lender who knew that his money was borrowed, for the purpose of being employed in the commission of a criminal act, injurious to society or to any of its members. This is all that we mean to decide in this case."

In none of these cases was there an agreement or covenant upon the part of the defendant to do the illegal thing, yet the mere knowledge that he was going to do it, or the mere fact that the merchandise or money was furnished for the purpose of enabling him to do it, prevented plaintiff from recovering. Certainly, if it had been a part of the contract that the defendant agreed to the unlawful thing, that is, if in consideration of the furnishing of the goods by the plaintiff, the defendant had promised (a) to pay, and (b), to do the illegal thing, for which, or with knowledge of which, they, in fact, were furnished, the court would not have applied the doctrine of divisibility of covenants. The maxim, *ex turpi causa non oritur actio*, applies, whether the illegal purpose be part of the agreement or simply be understood, or, possibly, aided or abetted by the plaintiff.

In the case at bar the goods were sold to enable the defendant to engage in the unlawful conspiracy and the plaintiff not only knew of the illegal use but it insisted thereupon as a condition precedent to further dealings. It can not be possible that this plaintiff is thereby in any better position and more entitled to insist upon the per-

formance of that which was legal, than the plaintiffs in the cases just cited. Moreover, the illegality could not be waived, which seems to be a prerequiste to the application of the doctrine of divisibility of covenants, for the reason that the illegality was an accomplished thing. It was insisted upon as a condition precedent. After having received the benefit of it, it is too late for the plaintiff to claim that it waives it.

X.

The Contract in Question in this Suit is Within the Prohibitions Both of the Federal and the State Statutes.

While there is a decided difference in the verbiage of the Sherman Act, when compared with the New York statutes and the Ohio statute against monopolies and trusts, we regard these differences as entirely immaterial. The purpose and intent of each statute is practically the same in prohibiting contracts and combinations of the character involved in this suit.

The Sherman Act prohibits every contract, combination in form of trust or otherwise, or conspiracy in restraint of trade or commerce. Any person who shall make any such contract or engage in any such combination or conspiracy, or shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce, shall be deemed guilty of a misdemeanor.

The acts of New York and Ohio prohibit the same acts when applied to matters within their jurisdictions. It is true that the New York statute is somewhat broader

in expression in that it penalizes every person "who shall make, or attempt to make, or enter into any such contract, agreement, arrangement or combination, or who within this state shall do any act pursuant thereto," and the Ohio statute similarly prohibits and penalizes any agreement by which two or more persons "shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation, between them or themselves and others, so as to directly or indirectly, preclude a free and unrestricted competition."

The expressions quoted from the New York law and the Ohio law may more pointedly manifest the intention of the Legislature with respect to the facts set up in the answer, than does the Sherman law, because the state laws go more fully into detail. But the broad provisions of the Sherman Act, as construed by the courts in the decisions which we have already cited, are quite as effective as are the more particular prohibitions of the states in reaching any scheme which the cupidity of man or the ingenuity of counsel has so far been able to devise for the purpose of restraining trade or commerce among the states by any of the methods particularized by the state Legislature. There can be no doubt that the preventing of unrestricted competition by fixing, or keeping up, the price of any article or commodity of trade, particularly when coupled with a refusal to deal with, or sell to, one violating the provisions of such an agreement, is a restraint of trade or commerce and hence, if affecting interstate commerce, within the prohibition of the Sherman Act.

Addyston Pipe & Steel Co. v. *U. S.*, 175 U. S., 211, 244.
Montague v. *Lowry*, 193 U. S., 38.
Loder v. *Jayne*, 142 F. R., 1010, 1014.

Since the answer was drafted in this case the later decisions of the courts have made it quite plain that such combinations and conspiracies as are set up in the answer do restrain interstate commerce.

The case just cited, of *Montague* v. *Lowry*, 193 U. S., 38, very forcibly illustrates the extent of the prohibitions of the Sherman Act, and in view of that decision, there can be no doubt of the applicability of that law to the facts relied upon.

It may be true, as was decided by the Circuit Court of Appeals for the Eighth Circuit, in *Hadley Dean Plate Glass Co.* v. *Highland Glass Co.*, 143 F. R., 242, that state anti-trust statutes can not affect a contract between a manufacturer in one state and a dealer in another state, for the manufacture in one and the delivery in the other of an article of commerce, as the Sherman law alone applies to those facts.

Nevertheless, when, by the terms of such a contract as there is in this case, a prohibition is attempted against unrestricted acts of ownership by the purchaser of goods, after they have entered into his possession and cease to be articles of interstate commerce, it would seem that the prohibitions of the state statute then apply. If the agreement involved in this suit were valid it would prevent the defendant selling below trust prices in Ohio where a part of the goods were intended to be sold by it, preventing, in other words, the free and unrestricted play of the laws

of supply and demand and the natural competition of commerce within the state.

Certainly it must be within the powers of the state to prohibit such agreements, and, unquestionably, they are prohibited by the language of the Valentine Act, as previously quoted:

> "To make or enter into or execute or carry out any contracts, obligations or agreements * * * not to sell, * * * any article or any commodity * * * below a given standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article * * * at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article * * * so as to directly, or indirectly preclude a free and unrestricted competition," etc.

In the Hadley Dean Plate Glass Co. case the defense was limited to the fact that the plaintiff was an illegal combination, and the defense was made upon a contract solely for the manufacture in one state of a commodity to be delivered in another. In the case at bar, the defense is based upon the attempt to control the defendant in the sale of goods after it had received them, which stipulation in its contract was made as a part of a general scheme between substantially all the manufacturers and with every other jobber in the country, so that it was clearly, so far as the goods which were to be resold in Ohio by the defendant were concerned, an attempt to fix, by agreement, the prices of such goods in restraint of trade and commerce in Ohio. So far as the goods were to be resold by the defendant in other states than Ohio, and so far as the

purchases by the defendant of goods from manufacturers in other states for shipment to it were limited to the trust, the Sherman law applies.

In reference to the contention on behalf of plaintiff, that an act of the Legislature of the state where the contract is made, which declares the same to be illegal can not be enforced elsewhere, we beg to submit that the two cases cited upon that point by plaintiff do not at all support the proposition. On the other hand, the provisions of such legislation have been enforced in other states, as for example, a provision of the Penal Code of New York, which is still in force, and which is applicable to this controversy, was given effect by the Supreme Court of Pennsylvania, in *Morris Run Coal Co.* v. *Barclay Coal Co.*, 68 Pa. St., 173.

XI.

The Gist of the Arguments.

If we assume the illegality of the combination between the manufacturers, including the formation of the plaintiff company, the difference in position between the plaintiff and defendant may be thus summarized:

On behalf of plaintiff it is contended, that plaintiff, having once acquired a monopoly, it could make any contract with respect to the subject of that monopoly that any dealer or manufacturer might lawfully make with respect to his product; that it is lawful for a manufacturer to require a purchaser from him to sell only at fixed prices and buy no where else, and that a manufacturer can even require such agreements from all persons who buy from

him. Hence, it is argued, it was lawful for the plaintiff to make the contract which it did with the defendant.

It is further contended, that, even if there be any illegality in the contract, it is only in that portion of the contract requiring the defendant to sell at fixed prices, and that that clause is severable, may be disregarded and the rest of the contract enforced.

On behalf of the defendant, it is contended, that none but those having a monopoly recognized by the law, as in patented or copyrighted articles, can legally require all purchasers to maintain prices, and that it is illegal for anyone else, particularly for anyone who has illegally obtained a monopoly, to extend and enforce that monopoly by requiring all its customers to sell only at fixed prices, on penalty of not otherwise being able to obtain goods. Such agreements made, by such illegal possessors of a monopoly, with all jobbers are in direct restraint of commerce.

In those cases cited for plaintiff in this connection which do not relate to patented articles, or other articles legally monopolized, as in *Whitwell* v. *Cont. Tob. Co.*, 125 F. R., 454, and *Phillips* v. *Iola Co.*, 125 F. R., 593, it is expressly declared as a reason for the decisions, that the vendors did not have a monopoly of their respective products. Agreements, whereby competition between all the wholesale dealers in a commodity not legally monopolized, is annulled, and the prices asked by them are fixed or enhanced, are as much in restraint of trade as similar agreements between manufacturers.

(2) The contract between plaintiff and the defendant, which is in question in this suit was not the independent contract of the plaintiff nor was it made by it after the

acquisition of the commodity in an honest effort to dis pose of those goods. The goods, in reality, never were the goods of the plaintiff, but were sold to the defendant directly by the manufacturers and through their own sales organizations, using the name of the plaintiff and directing payments to be made to it as a device to cover thei illegal agreements in restraint of trade. The agreement in question, between the plaintiff and defendant, was planned before even the plaintiff was formed, as a part of the conspiracy in restraint of trade between the manufacturers, who realized that in order to keep up their own enhanced prices they must ensure the wholesalers against competition on the high level of prices which they established.

Plaintiff was formed with a nominal capital for the purpose of making these contracts with defendant and all other jobbers. These contracts made by the defendant and all other jobbers were in reality made with all the manufacturers in the combination as a part of the scheme and bound the jobbers to deal only with those manufacturers, and as a condition precedent to their getting goods, bound them to sell at the enhanced prices fixe by the combination. The agreement was, therefore, a part of the illegal scheme, made in carrying out and in furtherance of its design.

The plaintiff's argument altogether ignores those facts which are pleaded and admitted.

The language of Lord Kenyon, in *Booth* v. *Hodgson*, 6 T. R., 405, 408, and quoted in *McMullen* v. *Hoffman* 174 U. S., 639, 656, is particularly applicable to the position assumed by the plaintiff's counsel. Lord Kenyo observed that it seemed to be admitted by counsel for plaintiff—

"That if the whole case were disclosed to the court, there was no foundation for the demand. They say to the court, 'suffer us to garble the case, to suppress such parts of the transaction as we please, and to impose that mutilated state of it on the court as the true and genuine transaction, and then we can disclose such a case as will enable our clients to recover in a court of law.' Such is the substance of this day's argument. It is a maxim in our law that a plaintiff must show that he stands on a fair ground when he calls on a court of justice to administer relief to him."

(3) When all the facts are taken into consideration, there is no room for the application of the principle of divisibility of covenants. The whole purpose and consideration of the contract was illegal, because made a: an inseparable part of an illegal scheme and in furtherance and execution of it. Furthermore, there can be no division when some of the covenants are illegal in the sense of being *malum in se* or criminal in their nature.

We respectfully submit, that on consideration of all th: facts pleaded, the demurrer to the third defense was properly overruled.

ORRIS P. COBB,
MORISON R. WAITE,
Counsel for Respondent.

APPENDIX.

(1) SHERMAN ACT.

The provisions of the Sherman Act, being the statute of July 2d, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," Twenty-sixth Statute, 209, so far material is here printed for convenience of reference:

> "SECTION 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared to be illegal. Every person who shall make such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine, not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.
>
> "SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.
>
> "SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such territory and another, or between any such

territory or territories and any state or states or the District of Columbia, or with foreign nations, or between the district of Columbia and any state or states or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

(2) New York Statute.

The New York statute in existence at the time the combination was formed, and at the time of the sale of the most of the goods, was Chap. 383, of the Acts of New York, 1897, which became a law May 7, 1897. This act was amended by Chap. 690, of the Laws of 1899, which became a law May 25, 1899. There is no change, however, in Sections 1 and 2 of the amended Act from Sections 1 and 2 of the Act of 1897. These sections are the same in each act; are those which define the combination in restraint of trade and fix a penalty, and are the only ones material in this controversy. They are as follows (Acts N. Y. Chap. 690, Laws 1899):

"Section 1. Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use is or may be created, established, or maintained, or whereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby, for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade, or occupation, is or may

be restricted or prevented, is hereby declared to be against public policy, illegal and void.

"SEC. 2. Every person or corporation, or any officer or agent thereof, who shall make, or attempt to make or enter into any such contract, agreement, arrangement or combination, or who, within this state, shall do any act pursuant thereto, or in, toward, or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and, on conviction thereof, shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both." * * *

(3) OHIO STATUTES.

The Ohio act, known as the Valentine Act, and applicable to this controversy, is that of April 19, 1898, 93 O. L., 143. The provisions of that act material to this controversy, are these:

"SECTION 1. *Be it Enacted by the General Assembly of the State of Ohio*, That a trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations, or associations of persons, or of any two or more of them for either, any or all of the following purposes:

"1. To create or carry out restrictions in trade or commerce.

"2. To limit or reduce the production, or increase, or reduce the price of merchandise or any commodity.

"3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

"4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce

intended for sale, barter, use or consumption in this state.

"5. *To make or enter into or execute or carry out any contracts,* obligations or agreements of any kind or description, *by which they shall bind, or have bound themselves not to sell,* dispose of or transport *any article or any commodity or any article of trade,* use, merchandise, commerce or consumption, *below a common, standard figure or fixed value,* or by *which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others,* so as to directly, or indirectly, preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy, and void.

"SEC. 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty ($50) dollars nor more than five thousand ($5,000) dollars, or be imprisoned not less than six months nor more than one year, or by both

such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

"SEC. 8. That any contract or agreement in violation of the provisions of this act, shall be absolutely void and not enforceable either in law or equity.

"SEC. 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state."

The constitutionality of the Ohio law has been twice sustained by the Supreme Court of the state—

State, ex rel Monnett, v. *Buckeye Pipe Line Co.,* 61 O. S., 520.
State v. *Gage,* 72 O. S., 210.

FILED.
APR 27 1908
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States

OCTOBER TERM, 1907.

CONTINENTAL WALL PAPER COMPANY,
Petitioner,

against

THE LEWIS VOIGHT & SONS COMPANY,
Respondent.

No. 15

Supplemental Brief on Behalf of Respondent.

The original brief on behalf of respondent was in the press before receipt of that upon behalf of the petitioner.

The opening paragraph in petitioner's brief is as follows:

> "The action is the ordinary common law action to recover for goods sold. The course of procedure on the trial of such an action would be to prove the sale and delivery of the goods. It would be unnecessary for the plaintiff to prove any of the matters set forth in the answer, or to rely upon any of the contracts therein pleaded."

That statement was emphasized in oral argument. Much of the brief upon behalf of petitioner seems based upon the same assumption.

In the brief upon behalf of the respondent on the other hand, it is urged that this action, though in the short form permitted by the Ohio Code, is nevertheless in fact an action upon the illegal contract, Exhibit 2, of the third defense, and that plaintiff would have to rely upon that contract for recovery. The form of this action is governed by what was Section 122 of the original Ohio Code of Civil Procedure, now Section 5086 of the Revised Statutes of Ohio. That section reads as follows:

> "In an action, counterclaim, or set-off, founded upon an account, or upon an instrument for the unconditional payment of money only, it shall be sufficient for a party to set forth a copy of the account or instrument, with all credits and indorsements thereon, and to state that there is due to him, on such account or instrument, from the adverse party, a specified sum which he claims with interest. * * *"

Under the Ohio authorities, it is not requisite for the maintenance of an action on such pleading, that there should really have been prior to the beginning of the action an account or book entries. It is sufficient that the items sued upon be such as ordinarily form the subject of items in account books.

> *Black* v. *Chesser,* 12 O. S., 621,
> *Horning* v. *Poyer,* 18 C. C. Rep., 732.

Neither is this form of action limited to the case of sales of goods. It can be employed in any case of special contract where fully performed on one side.

> *City of Cincinnati* v. *Cameron,* 33 O. S., 336, 356,
> See also 2 Bates' Pleadings, Practice, Parties and Forms, 863, par. 3.

The form of the pleading, as shown by the reports of the cases above cited, does not dispense with the proof of the facts creating the liability, including, of course, the proof of whatever contract may be the foundation of that liability, whether express or implied.

In the case at bar we have an express contract, "Exhibit 2" (Rec., p. 419), in which the parties agreed upon the prices, the discounts, the terms of payment, the allowance of freights and other matters, all of which will have necessarily to be proved to enforce the liability asserted against the defendant. Every order given by defendant for wall paper was given under and pursuant to that contract, Exhibit 2. That is not only the effect of the contract itself, but of the admitted allegations of the third defense:

> "These defendants aver that the prices charged in said Exhibit attached to said amended petition, are the prices fixed and determined in pursuance of, and by the combination or trust agreement, as above set forth * * * * In transacting all business aforesaid, at all said times, said business was transacted under and in pursuance of said combination or trust agreement, and for the purposes, and each of them, above specified, and not otherwise.
>
> "The allegations in said plaintiff's petition set forth as a suit on account, are an attempt to enforce, carry out and recover upon, and by virtue of said unlawful combination, aforesaid, the prices fixed by such combination * * *" (Rec., p. 399).

In the face of the allegations of this defense, the suggestion in oral argument, that the sales of the goods for which this is an action to recover the price, were distinct, uncon-

CONTINENTAL WALL PAPER COMPANY *v.* LOUIS VOIGHT AND SONS COMPANY.

CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

No. 15. Argued April 24, 27, 1908.—Decided February 1, 1909.

Where a number of manufacturers situated in different States engaged in manufacturing an article sold in different States, organize a selling company through which their entire output is sold, in accordance with an agreement between themselves, to such persons only as enter into a purchasing agreement by which their sales are restricted, the effect

is to restrain and monopolize interstate and foreign trade and commerce and is illegal under the Anti-Trust Act of July 2, 1890, c. 647, 26 Stat. 209; and so held in regard to a combination of wall paper manufacturers.

While a voluntary purchaser of goods at stipulated prices under a collateral, independent contract cannot avoid payment merely on the ground that the vendor was an illegal combination, *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, a vendee of goods purchased from an illegal combination in pursuance of an illegal agreement can plead such illegality as a defense.

The court cannot lend its aid in any way to a party seeking to realize the fruits of an illegal contract, and, while this may at times result in relieving a purchaser from paying for what he has had, public policy demands that the court deny its aid to carry out illegal contracts without regard to individual interests, or knowledge of the parties.

The refusal of judicial aid to enforce illegal contracts tends to reduce such transactions.

In determining whether a contract amounts to a combination in restraint of interstate trade in violation of the act of July 2, 1890, all the facts and circumstances will be considered. *Addyston Pipe Co.* v. *United States*, 175 U. S. 211, 247.

148 Fed. Rep. 939, affirmed.

THE facts appear in the statement of MR. JUSTICE HARLAN.

Mr. Louis Marshall, with whom *Mr. Joseph Wilby* was on the brief, for petitioner:

Assuming, but not conceding, that the organization of the plaintiff was for the purpose of restraining competition, and enhancing prices, the defendants have no defense, under common-law considerations, to the action brought against them to recover for goods sold and delivered.

The illegality of the acts of plaintiff, even if proved, do not absolve the defendants from the legal obligation to pay for goods admittedly bought by them. "A person does not become an outlaw and lose all rights by doing an illegal act." *National Bank & Loan Co.* v. *Petrie*, 189 U. S. 425.

This case is governed by the decision of this court in the case of *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, and

cases there cited. See also, to the same effect, the following: *Edison Electric Light Co.* v. *Sawyer-Man Electric Co.*, 53 Fed. Rep. 598; *American Soda Fountain Co.* v. *Green*, 69 Fed. Rep. 333; *Brown Saddle Co.* v. *Troxel*, 98 Fed. Rep. 620; *National Folding Box and Paper Co.* v. *Robertson*, 99 Fed. Rep. 985; *Otis Elevator Co.* v. *Geiger*, 107 Fed. Rep. 131; *Ocean Ins. Co.* v. *Polleys*, 13 Peters, 164; *Armstrong* v. *American Exchange Bank*, 133 U. S. 467; *Buchanan* v. *Drovers' National Bank*, 55 Fed. Rep. 226; *Morris* v. *Norton*, 75 Fed. Rep. 926; *Phalen* v. *Clark*, 19 Connecticut, 432; *The Charles E. Wisewall*, 86 Fed. Rep. 674; *Phenix Ins. Co.* v. *Clay*, 101 Georgia, 332; *Erb* v. *Insurance Co.*, 98 Iowa, 611; *Niagara Ins. Co.* v. *De Graff*, 12 Michigan, 136; *Tracy* v. *Talmage*, 14 N. Y. 175; *Curtis* v. *Leavitt*, 15 N. Y. 245; *Mandelbaum* v. *Greyovich*, 17 Nevada, 95; *Planters' Bank* v. *Union Bank*, 16 Wall. 500; *Yarborough's Admr.* v. *Avant*, 66 Alabama, 526; *Ware* v. *Curry*, 67 Alabama, 274; *Martin* v. *Hodge*, 47 Arkansas, 378; *National Distilling Co.* v. *Cream City Importing Co.*, 86 Wisconsin, 352; *Minnesota Lumber Co.* v. *Whitebreast Coal Co.*, 56 Ill. App. 248; *Congress Co.* v. *Knowlton*, 103 U. S. 49; *Welch* v. *Wasson*, 6 Gray, 506; *Levin* v. *Chicago Gas Light & Coke Co.*, 64 Ill. App. 393; *Ingraham* v. *National Salt Co.*, 130 Fed. Rep. 676.

Again, assuming that the plaintiff was a trust, and that it could have been lawfully proceeded against, under the act of Congress of July 2, 1900, yet that fact does not prevent the plaintiff from recovering for the goods which it sold and delivered to the defendants.

While the statute declares a trust, or combination, such as the plaintiff is claimed to be, illegal, and subjects every person entering into the combination to fine and imprisonment, and makes adequate provision for its annulment, yet there is nothing in the act, which permits one who purchases goods from such a trust, to despoil it of its property. The Government of the United States is sufficiently powerful to cope with an unlawful monopoly, without legalizing robbery of the char-

acter which the defendants are seeking to perpetrate, through the aid of the courts. *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *The Charles E. Wisewall*, 74 Fed. Rep. 802; affirmed, 86 Fed. Rep. 671; *Dickerman* v. *Northern Trust Co.*, 176 U. S. 195; *Lafayette Bridge Co.* v. *City of Streator*, 105 Fed. Rep. 229; *Cincinnati Packet Co.* v. *Bay*, 200 U. S. 179, 185.

Even assuming, that the clause contained in the contract between the plaintiff and the defendants, which prohibited the latter from selling any of the merchandise, purchased from the former, at lower prices than those specified in the schedule annexed, was illegal, the only effect of such illegality would be, to nullify that provision, and not to prevent the plaintiff from recovering for merchandise actually received and kept by the defendants. *Pigot's Case*, 11 Coke Rep. 27*b* (1615), holding that if some conditions indorsed upon a bond, are against law, and some are good and lawful, the covenants or conditions which are against law, are void *ab initio*, and the others stand good. And see Hammon on Contracts, §§ 251 *et seq.;* Anson on Contracts (8th ed.), 206; *Pickering* v. *Ilfracombe Ry. Co.*, L. R. 3 C. P. 235, 250; *United States* v. *Bradley*, 10 Pet. 343; *Hynds* v. *Hays*, 25 Indiana, 31; *Kerrison* v. *Cole*, 8 East, 231; *Gelpcke* v. *City of Dubuque*, 1 Wall. 221; *Gaskell* v. *King*, 11 East, 165; *Erie Ry. Co.* v. *Union Locomotive & Exp. Co.*, 35 N. J. L. 240; *Baines* v. *Gearey*, 35 Ch. Div. 154; *Wallis* v. *Day*, 2 Mees. & W. 273; *Haynes* v. *Doman*, L. R. (1899) 2 Ch. 13; *Oregon Navigation Co.* v. *Winsor*, 20 Wall. 64; *Western U. T. Co.* v. *Burlington & S. W. Ry. Co.*, 11 Fed. Rep. 1; *Presbury* v. *Fisher*, 18 Missouri, 50; *Moore* v. *Bonnet*, 40 California, 251; *Hanauer* v. *Gray*, 25 Arkansas, 350; *Price* v. *Green*, 16 Mees. & W. 346; *Wiley* v. *Baumgardner*, 97 Indiana, 66; *Dean* v. *Emerson*, 102 Massachusetts, 480; *Peltz* v. *Eichele*, 62 Missouri, 171; *United States* v. *Bradley*, 10 Pet. 343, 360, 364; *Trenton Potteries Co.* v. *Oliphant*, 58 N. J. Eq. 507; *S. C.*, 46 L. R. A. 255; *Thomas* v. *Miles*, 3 Ohio St. 274; *Smith's Appeal*, 113 Pa. St. 579.

The principle of these cases is directly in point here. The plaintiff agreed to sell to the defendants certain merchandise

at an agreed price. The latter agreed to pay for the merchandise received the stipulated price, and also agreed that they would not sell such merchandise at a lesser price than that specified in the contract.

Assuming that the latter condition is void, in that event it was not binding upon the defendants; but, as has been seen, such invalidity would not absolve the defendants from liability on their covenant to pay for the merchandise delivered.

Mr. Orris P. Cobb and *Mr. Morrison R. Waite* for respondent:

Treating the matter, as it must be treated, as one general scheme, all one agreement, it plainly comes within the common-law inhibition against contracts in restraint of trade, as well as the statutes. *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211; *Swift & Co.* v. *United States*, 196 U. S. 375, 396; *Montague* v. *Lowry*, 193 U. S. 38, 45; *Loewe* v. *Lawlor*, 208 U. S. 274.

The combination was an illegal trust, and an unlawful combination within the meaning of the statutes. *United States* v. *Trans-Missouri Assn.*, 166 U. S. 290; *United States* v. *Joint Traffic Assn.*, 171 U. S. 505; *Montague* v. *Lowry*, 193 U. S. 38; *Northern Securities Co.* v. *United States*, 193 U. S. 197; *Swift & Co.* v. *United States*, 196 U. S. 375; *National Cotton Oil Co.* v. *Texas*, 197 U. S. 115, 129; *United States* v. *Jellico C. & C. Co.*, 46 Fed. Rep. 432; *American Biscuit Co.* v. *Klotz*, 44 Fed. Rep. 721; *Oliver* v. *Gilmore*, 52 Fed. Rep. 562; *C., M. & St. P. R. Co.* v. *Wabash &c. R. R. Co.*, 61 Fed. Rep. 993, 997; *National Harrow Co.* v. *Hench*, 83 Fed. Rep. 36, 38; *S. C.*, 84 Fed. Rep. 226; *United States* v. *Coal Dealers' Assn.*, 85 Fed. Rep. 252; *Cravens* v. *Carter-Crume Co.*, 92 Fed. Rep. 479, 485; *Lowry* v. *Tile & G. Assn.*, 98 Fed. Rep. 817, 826; *S. C.*, 106 Fed. Rep. 38; *Montague* v. *Lowry*, 115 Fed. Rep. 27; *United States* v. *C. & O. Fuel Co.*, 105 Fed. Rep. 93; *C. & O. Fuel Co.* v. *United States*, 115 Fed. Rep. 610; *City of Atlanta* v. *Chattanooga, F. & P. Co.*, 101 Fed. Rep. 900.

The contract between plaintiff and defendant, under which

arises the account sued on, is a part of and directly connected with the illegal combination, and hence, unenforceable, and not merely a collateral or independent contract.

It is clear that this is not a mere case of a sale by a monopoly or a trust to a third person and that the objection raised by the defendant is not the same as that which would be raised by an outsider purchasing from a trust. *Connolly* v. *Union Sewer Pipe Company*, 184 U. S. 540, distinguished.

The fact that the consideration has all been executed on one side cannot alter the matter. There can be no recovery for goods sold and delivered under trust contracts, or any other contract creating an illegal monopoly in restraint of trade. See *Detroit Salt Co.* v. *National Salt Co.*, 134 Michigan, 103; *Arnot* v. *Pittston & Elmira Coal Co.*, 68 N. Y. 558; *Unckles* v. *Colgate*, 148 N. Y. 529, 538; *Clancy* v. *Onondaga Fine Salt Mfg. Co.*, 62 Barb. 395, 405–407; *Houck* v. *Brew. Assn.*, 88 Texas, 184; *Fuqua* v. *Pabst Brew. Co.*, 90 Texas, 298; *Texas Brew. Co.* v. *Templeman*, 90 Texas, 277; *Carriage Co.* v. *Hatch*, 19 Tex. Civ. App. 120.

All the statutes relied on in this case expressly forbid the making of the contracts of which the one between the plaintiff and defendant, set out in the third defense, was a material step; expressly declare the contracts void; and expressly impose a penalty upon the making of them and expressly make them criminal.

Under these statutes such transactions and such contracts are just as illegal as gambling; as contracts to assist in the smuggling of goods; as contracts to deal in futures; as contracts to make and circulate counterfeit money; as the sale of liquor in violation of law; as contracts to assist in prostitution; or in any other way to violate criminal statutes, or in furtherance of such objects.

The cases in which recovery has been denied either of the contract price when suing on the contract or on the common counts ignoring the contract, are numerous. *Ribbans* v. *Crickett*, 1 B. & P. 264, 266; *Bensley* v. *Bignold*, 5 B. & Ald.

335; *Marchant* v. *Evans*, 2 J. B. Moore, 14; *Gibbs* v. *Gas Co.*, 130 U. S. 396, 412; *Irwin* v. *Williar*, 110 U. S. 499; *McMullen* v. *Hoffman*, 174 U. S. 639; *Embry* v. *Jemison*, 131 U. S. 336, 348; *Miller* v. *Ammon*, 145 U. S. 421, 427; *Hanauer* v. *Doane*, 12 Wall. 342; *Sprott* v. *United States*, 20 Wall. 459; *Kohn* v. *Melcher*, 43 Fed. Rep. 641; *Peck* v. *Burr*, 10 N. Y. 294, 297; *Johnston* v. *Dahlgren*, 166 N. Y. 355, 358; *Brinkman* v. *Eisler*, 40 N. Y. St. 865, 866.

These cases show that wherever and in whatever form the question has arisen, whether for goods sold and delivered, for money loaned, services rendered, there can be no recovery on an implied contract where the express contract is illegal and the goods sold, the money loaned, or the services performed under and in pursuance of and in furtherance of an illegal contract.

MR. JUSTICE HARLAN made the following statement of facts.

The Continental Wall Paper Company, a corporation of New York brought this action against The Lewis Voight & Sons Company, a corporation of Ohio, to recover the sum of $56,762.10, as the alleged balance on an account for merchandise sold and delivered to the defendant.

The petition and answer were both amended. The amended answer contained six separate defenses, the last three of which were made counterclaims and cross-petitions. The plaintiff demurred to the second, third, fourth and fifth defenses upon the ground that neither of them stated facts sufficient to constitute a defense; and it demurred to the first and second counterclaims and cross-petitions upon the ground that they did not state facts sufficient to constitute a cause of action against the plaintiff. It also replied to the sixth defense and to the third counterclaim.

The cause was submitted in the Circuit Court on the demurrers, and the court sustained the demurrer to the second, fourth and fifth defenses and to the first and second counter-

claims and cross-petitions, but overruled the demurrer to the third defense. The parties not desiring to plead further, it was adjudged that upon the allegations of the third defense the defendant was entitled to judgment (and judgment was entered) dismissing the petition and amended petition; and was likewise entitled to judgment (and judgment was entered) dismissing the first and second counterclaims and cross-petitions. The case was carried by the Continental Wall Paper Company to the Circuit Court of Appeals, where it was assigned for error that the Circuit Court erred in overruling the demurrer to the third defense, and in dismissing the suit. The Circuit Court of Appeals affirmed the judgment, thereby sustaining the sufficiency of that defense. The case is fully reported in 148 Fed. Rep. 939.

If the facts stated in the third defense—taking them to be true, as upon demurrer we must do—are sufficient to prevent any recovery whatever, by the plaintiff, it is not necessary to go further and consider any other questions. In view of the peculiar character of the case it is deemed just to the parties, however much it may lengthen or burden this opinion to do so, to set out that defense fully and in the words of the answer.

The third defense—the facts stated therein being admitted by the demurrer—gives the names of numerous companies and firms (more than thirty in number) which formed a combination by the name of the Continental Wall Paper Company, and also sets out the various agreements under which, it was alleged, the combination was organized to restrain and monopolize interstate commerce. The defendant corporation alleged that on the first day of July, 1898, the National Wall Paper Company was the owner of factories for the manufacture of wall paper in certain cities in New York, Pennsylvania, New Jersey and Massachusetts, and that there were like factories owned by persons and corporations in other States; that "all of said companies and firms were engaged in the manufacture of wall paper and in selling their product in the States where their said manufactories were situated, and in all the

other States and Territories of the United States and in foreign countries, and were each and all engaged in commerce between the States and Territories and with foreign nations, and they produced and sold upwards of ninety-eight (98) per cent of all the wall paper manufactured and sold in the several States and Territories of the United States. Contriving and intending and conspiring with each other to form a combination and trust by which to limit the production of wall paper in the United States and also to enhance the price thereof to the jobbers, the wholesalers, the retailers and the consumers of wall paper, which is an article of commodity of general necessity and use among the United States and foreign countries, and, as such, was and is used and sold everywhere for the preservation, protection and decoration of buildings and dwelling houses; and, contriving and intending and conspiring with each other to unlawfully control and restrain trade and commerce between the several States and Territories of the United States, and with foreign countries, the firms and corporations hereinbefore mentioned, agreed with each other that while said corporations and persons retain the ownership of their several plants and business, and preserve and continue their separate identities and operate said several manufactories and business as before, the control of said several businesses, and all matters relating to and affecting the production of said establishments and the prices and sale of wall paper manufactured thereby, should be placed under the control of a committee to be appointed by said several corporations and firms, each to have a voice in such appointment, in proportion to the capacity of the several factories owned by them respectively; that said committee should adopt rules and regulations governing the manner of conducting the business of all said persons, firms and corporations, the hours said factories, owned by them, should be operated, the patterns of wall paper to be manufactured by them, the times when samples of the goods to be manufactured for the ensuing season should be submitted to a pricing committee, appointed by said committee, to enable it to classify and

fix the list prices thereof; to fix and determine list prices, discounts, terms of sale, equalization of freight rates and all other matters affecting the production and regulation of prices, and the classification of the dealers in wall paper in the United States; and the prices at which wall paper should be sold to, and by such several classes; and the division of the profits, thence arising among said corporations and firms, not in proportion to their production and sales, but in proportion to their capacity; and, further, that, to secure the faithful performance by each of said persons and corporations of the provisions of said trust agreement, they should each pay a sum into a common pool, in proportion to the capacity of their respective manufactories, which said sum should be forfeited by any of said manufacturers who should break said agreement, compete with the other parties to said agreement, or sell at other or different prices than those to be fixed by said committee. . . ."

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"The National Wall Paper Company, for itself and the members of said combination, hereinbefore alleged to be represented by it, should select three (3) so-called directors of said The Continental Wall Paper Company, and said other firms and corporations should select three (3) other so-called directors of said company, which six (6) so-called directors should select a seventh (7th), who should decide all disputed matters; that said corporation and firms, calling itself, or themselves, respectively, the vendor, should sign a printed contract or agreement with said The Continental Wall Paper Company, calling itself the company, a copy of which contract or agreement is attached hereto marked 'Exhibit 1,' [which is given in the margin [1]] the said agreement being printed with blanks for

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[1] EXHIBIT 1.

An agreement, made this — day of ——— in the year one thousand eight hundred and ninety-eight, by and between ——— ——— a corporation organized under the laws of the State of ——— (hereinafter called the vendor), party of the first part, and the Continental Wall Paper

the necessary signatures as well as numbers of shares allotted, the sum to be paid therefor and the name of the so-called vendor.

Company, organized under the laws of the State of New York (hereinafter called the company), party of the second part.

Whereas, the vendor is engaged in the manufacture and sale of wall paper, borders and other articles usually produced and handled in connection therewith, and the company is desirous of acting as its selling agent in handling the entire product of the vendor; and

Whereas, the company has an authorized capital of two hundred thousand dollars, divided into 16,000 shares, of the par value of $12.50 each; and

Whereas, the vendor is desirous of acquiring shares of the stock of said company at par, and to that end has offered to enter into this agreement and to secure the performance thereof by the deposit of said shares.

Now, therefore, in consideration of the foregoing recitals, and for other good and valuable considerations it is agreed, between the parties hereto, as follows:

First. The vendor hereby agrees to sell unto the company and the latter agrees to purchase, the entire product of wall paper that may be manufactured by the vendor for the period from July 20th, 1898, to the first day of July, 1899.

The prices at which the merchandise shall be sold to the company are set forth in a schedule hereto annexed, marked "A" and hereby made part of this agreement.

The vendor further grants unto the company the right to two renewals of said contract of one year each, provided that in the event of the election of the company to avail itself of either of said renewals it shall so signify in writing to the vendor before the first day of June next preceding the renewal term, and provided further that such election to renew shall be accompanied by the written consents of all the registered stockholders of the company, including that of the vendor.

Second. That the goods acquired by the company from the vendor hereunder which are to be sold to jobbers, shall be so sold by the company, and not by the vendor, for the account of the company. Such sale shall be made by the company at discounts from road prices fixed in the schedule hereto annexed, marked "B," which is hereby made part of this agreement. The vendor will deliver such goods upon the direction of the company, at the risk and for the account of the latter f. o. b. at the place of manufacture, provided, however, that in all cases in which the goods are manufactured at places other than the cities of New York

"For the purposes and with the intentions aforesaid, it was further agreed that said The Continental Wall Paper Company should, in some form so as to disguise the real nature of the transaction, compel all dealers in wall paper, whether

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or Philadelphia the vendor will equalize the freights with either of said cities out of the proceeds receivable for such goods. Memorandum invoices shall be supplied to the customers and to the company immediately upon the shipment and delivery of such goods, said invoices specifying quantities and road prices.

Third. There shall be furnished by the vendor to the company, on the 7th, 14th, 21st and last days of each month (except when those days fall on Sundays, and then on the next preceding day), a just and true statement of all shipments and deliveries of merchandise included in this contract which the vendor may make for the account of the company, which statement shall contain the names of the purchasers, the character of the goods sold and the prices at which they are sold, to the end that the company may make the proper charges, and in order to entitle the vendor to be credited with the agreed cost price for such goods.

Each of such statements of shipment shall be accompanied by an affidavit of one of the officers of the vendor and one of its bookkeepers and of one of its shipping clerks, to the effect that the information contained therein is true.

Fourth. The vendor will, at the option of the company, sell for the latter such of the goods manufactured by the vendor as are to be disposed of to purchasers not classified as jobbers, which sales shall be made at the cost and expense of the vendor, said vendor hereby guaranteeing all credits connected with such sales. The prices at which and the terms upon which such goods are to be sold are designated in this agreement as the "road prices," and are contained in a schedule hereto annexed, marked "C," which is hereby made a part of this agreement.

On the 7th, 14th, 21st and last days of each month (except when those days fall on Sundays, and then on the next succeeding days) the vendor will furnish to the company a statement showing all the shipments made on account of such sales, which statement shall contain the names of the purchasers, the character of the goods and the prices at which they were sold, and such sales shall be credited to the vendor by the company at the prices fixed in schedule "A," and shall be charged against said vendor at the prices at which they were sold, which shall in no event be less than those designated in schedule "C."

The vendor is to receive for its services and expenses connected with

jobbers or wholesalers, to sign an agreement obligating the jobbers or wholesalers to buy from no one but said members of said combination and trust, and at the prices fixed in schedule B, attached to said 'Exhibit 1,' and likewise an agreement

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such sales and allowances discounts equal to those who are designated in a classification made by the parties hereto as "second class jobbers," less the discounts made on sales to purchasers designated in the accompanying schedules as "quantity purchasers" on which the vendor has allowed the quantity discount, except that where special and exclusive goods are sold there shall be an allowance of 30 per cent discount to the vendor.

The prices of goods as fixed by schedules "A" and "C" may be altered from time to time, but the discounts allowed to jobbers shall not be altered at any time during the term of this agreement.

Fifth. The vendor will make collections of all accounts for goods sold by it for the accounts of the company under the provisions of the agreement, except for sales to jobbers (which accounts the company is to collect), and will, on the 10th of each and every month during the term of this agreement, account to the company. Such accounts shall be accompanied by a payment by the vendor to the company of the difference between the prices at which the goods are agreed to be sold to the company as embodied in schedule "A," and the prices at which the vendor has agreed to dispose of said goods as contained in schedule "C."

The purchases made by the company from the vendor hereunder shall be upon the same credit and terms as those accorded to other dealers, but the company shall have the right to anticipate the due date of all such purchases, and will pay, on the 10th day of each month, to the vendor a sum on account of all shipments of the preceding month equal to not less than 30 per cent of the road prices of goods shipped to the jobbers by the company.

Sixth. The vendor hereby grants unto the company the right, and it shall be the duty of the latter, through its officers selected for that purpose, to audit the books of accounts of the vendor at such time and in such manner as the company may, from time to time, deem necessary or proper. This provision is of the essence of the agreement, and a failure on the part of the vendor to faithfully perform the same shall operate as a breach of the contract entitling the company to abrogate the agreement and to such damages as it may be able to establish in addition to the absolute transfer and surrender to it of the stock to be pledged as hereinafter provided.

Seventh. There shall be a committee selected from the company to

by such jobbers, not to sell goods to dealers other than jobbers, at lower prices or upon better or more favorable terms than those shown in schedule C, attached to said 'Exhibit 1,' under the penalty that, if they refused so to do, no wall paper should

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be known as an auditing committee, which shall be made up from among the directors. Said committee shall have power to establish such a system of bookkeeping as in its judgment may be advisable.

In order to conform as nearly as may be to the laws of the various States in which the factories of the vendor are located, it is understood that the vendor shall not be at liberty to require from the company the acceptance of the product of more than ten hours per day of any one of said factories.

The product intended to be sold to the company hereunder and which the latter undertakes to acquire, does not contemplate the enlargement of the manufacturing facilities of the vendor, but nothing herein contained shall be construed as affecting the right of the vendor to substitute new machinery of the same capacity for any now in use which may become useless through wear or through destruction by fire or other casualty.

The power to designate the parties who are to be classed as jobbers and the discounts to which they are entitled is expressly reserved by the company, and such designation is to be made through its board of directors, but the vendor shall have the right to select the jobbers through whom the goods manufactured by it are to be distributed.

All orders placed with the vendor by jobbers on behalf of the company must at once be reported to the latter.

Eighth. The company hereby agrees to sell and the vendor agrees to purchase ——— shares of the common stock of the company, for which stock the vendor agrees to pay the sum of ——— in cash as soon after the execution and delivery of this agreement as the same may be demanded by the company, but only if and when the entire share capital of the company shall have been fully subscribed at not less than par.

The vendor will, after paying for said shares of stock, endorse the certificates representing the same, and deliver the certificates so endorsed in blank unto the company, upon the trust and agreement that the company shall hold said certificates as security for the performance by the vendor of each and all of the covenants and conditions of this agreement and that upon the refusal, neglect or omission of the vendor, its successors or assigns, to perform this agreement, or any part thereof, the said shares of stock and certificates represented thereby shall be immediately sold by the company at public or private sale, without

be sold to such jobber by any of said corporations or firms, and that, thereby, such jobbers should be driven out of business; and that, in some form or other, so as to disguise the real nature of the transaction, all wholesalers other than jobbers should be compelled to make an agreement in writing, with said corporations or firms, not to sell such goods on terms better or more favorable than those specified in schedule C, attached to said 'Exhibit 1,' under penalty that if such wholesaler refuse to sign and carry out said agreement, no wall paper would be sold to him by any of said corporations or firms, and he should be driven out of business, and that the profits made by such prevention of competition and enhancement of price should be divided among said corporations and firms nominally as dividends upon said stock, but in reality, in proportion to their respective holdings as aforesaid, and that said committee of said corporation and said firms, calling themselves such directors, should regulate all the matters hereinbefore averred, prevent competition between said corporations and firms, limit production and enhance prices, and close all channels by which the consumer or retailer could obtain wall paper from the producers thereof.

"In pursuance of said agreement, said plaintiff was nominally incorporated with the stock aforesaid, divided into the

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notice, upon such terms and at such price as the company or its officers may deem reasonable, and that the proceeds of the sale be paid into the treasury of the company as agreed and liquidated damages to the company for the breach of said agreement.

The parties hereto have fixed upon the said stock, and the proceeds thereof, as liquidated damages, because of the difficulty in establishing, in a court of law, the actual damage that would be suffered by the company in the event of the refusal, neglect or omission to perform this agreement, and in order to avoid the difficulty of such proof.

In witness whereof, the vendor and the company have respectively caused this agreement to be executed by their respective presidents and their respective corporate seals to be hereto attached pursuant to resolutions of their respective boards of directors, the day and year first above written.

number of shares aforesaid, of the par value aforesaid, which were divided among the parties to said agreement aforesaid, in the manner aforesaid, and said contracts signed by said The National Wall Paper Company, and said persons and corporations, being, at once, subscription for stock by said so-called vendors, the acceptance of such subscription by said The Continental Wall Paper Company, and by it, nominally, each so-called vendor sold unto the company, and the latter agreed to purchase, the entire product of wall paper manufactured by each of said vendors for the period from July 20th, A. D. 1898, to the first day of July, A. D. 1899.

"Said contract further fixed prices at which the merchandise should be nominally sold to the company, said prices being the cost of production with a slight profit added thereto, sufficient to cover incidental expenses merely. The prices at which said goods were to be nominally sold by said so-called vendors to said company are set forth in the schedule attached to said 'Exhibit 1' and marked 'A.'

"Said agreement further nominally provided that the goods pretended to be acquired by the company, from the so-called vendor, which were to be sold by jobbers, should be so sold by the company and not by the vendor, for the account of the company, but that the goods acquired by the company from the so-called vendor, which should be sold to wholesalers other than jobbers, should be sold by the so-called vendor for the account of the company.

"The schedule attached to said agreement contained a list of prices for all commodities in the wall paper line, which were called 'List' or 'Road Price,' and said contract provided that sales made to jobbers should be made at discounts from said 'List' or 'Road Prices' fixed in the schedule marked 'B,' annexed to said 'Exhibit 1,' but that, in all cases in which the goods were manufactured at places other than the cities of New York or Philadelphia, and sold to jobbers, the vendor should equalize the freights with either of the said cities, out of the proceeds receivable for such goods.

"In reality, the agreement was, and so the business was carried on, that the manufacturers should maintain sample rooms and selling agents, and should solicit and receive the orders from all wholesalers, whether jobbers or so-called 'Road' or 'Quantity Buyers;' that the entire business should be done by said so-called vendors, but payments should be made by the jobbers to the so-called company, and by the wholesalers, other than jobbers, directly to the so-called vendors.

"Said contract further provided, in order to protect said corporations and firms against competition from each other, and to insure against violation of said agreement, or any of them, that, from time to time, invoices should be supplied, at once to the customer and to the company, upon shipment and delivery of such goods, specifying quantities and road prices; that each vendor should furnish to the company, at periods stated, just, true, and sworn statements of all shipments and deliveries of merchandise made by the vendors direct to the purchasers, which statements should contain the names of the purchasers, the character of the goods sold, and the prices at which they were sold, so that the company might receive the difference between the prices at which the goods were nominally billed to said company, and at which they were sold to the purchaser, to the end that this difference, being the net profits derived from such purchase and sale, should be divided among such corporations and firms, in proportion to the capacity of their respective businesses, determined as aforesaid, without regard to the amount sold by each.

"The prices at which, and the terms upon which, goods were to be sold by the vendors to all wholesalers other than jobbers, were designated 'Road' or 'List' prices, and were contained in the schedule marked 'C,' annexed to said 'Exhibit 1,' and forming a part thereof.

"For the further purpose of carrying out said agreement, and ascertaining said net profits, and for further disguising the real nature of the transaction, it was provided that the so-called vendor should receive from sales made by it to so-called

'Quantity Buyers,' the difference between the discounts allowed to those designated in the classification hereinbefore referred to as 'Second Class Jobbers' and the discounts provided in said agreement to be made to purchasers styled, in said schedules, 'Quantity Buyers' in which the vendor is allowed the quantity discount, except that, where special and exclusive goods were sold, there should be an allowance of thirty (30 per cent) per cent discount to said vendor.

"Said agreement further stipulated that the prices of goods as fixed by said schedules A and C might be altered from time to time, but the discounts allowed to jobbers should not be altered at any time during the term of the agreement.

"Said written contract further provided that the so-called vendor should make collections of accounts for goods sold to wholesalers other than the jobbers, but that the company should collect the proceeds of sales to the jobbers, and that accounts should be stated between the so-called vendors and the company at stated periods, and the account accompanied by payment, by the so-called vendor, to the so-called company, of the difference between the prices at which the goods were to be billed to the company and the prices at which the so-called vendors had agreed to charge the 'Quantity-Buyers.'

"It was further stipulated in said agreement that monthly divisions should be made by said company of at least thirty (30) per cent of the 'Road Prices' of goods shipped to jobbers by the company.

"For the further purpose of protecting said corporations and firms and individuals from each other, preventing and stifling competition, and enforcing said combination, trust and monopoly, each of said corporations and vendors gave the company the right, and made it the duty of the company, to audit the books of account of said so-called vendors, at such times and in such manner as the company might from time to time deem necessary or proper. It was further stipulated that this right to examine and audit the books was of the essence of the agreement, and that a failure on the part of the so-called ven-

dor, to permit the same, should operate as a breach of the contract, entitling the company to abrogate the agreement, to recover such damages as it might be able to establish, and to the forfeiture of the stock held by said vendor in such company.

"It was further provided that said so-called company should appoint an auditing committee from its directors, which should establish such a system of bookkeeping as it thought advisable.

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"It was further a part of said agreements, though not reduced to writing, save as it set forth in said exhibit, that all jobbers and other wholesalers of wall paper should be forced to sign an agreement, binding themselves to purchase their entire stock of wall paper, nominally either from plaintiff or from said corporations or firms, at prices fixed in said 'Exhibit 1,' and that they should only sell at prices fixed in the schedules attached to said 'Exhibit 1,' under the penalty, which the combination of all of said corporations and firms enabled them to enforce, that such jobbers or wholesalers, in case of refusal to accede to the terms so imposed, or in case of violation thereof, should be unable to buy wall paper; should be driven out of business, and should sacrifice the good-will and capital therein invested.

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"In the further carrying out of said purpose, said plaintiff and other persons, natural or artificial, engaged in the manufacture and sale of wall paper in different States of the Union, and in trade and commerce between the several States and foreign countries, whose names and locations these defendants are unable to state, entered into contracts substantially similar to 'Exhibit 1,' except that, instead of such persons pledging stock in plaintiff as security for the performance, by them, of the stipulations of said contract, they gave other security, the nature of which these defendants are unable to state, and which such other persons assume obligations, and gave, to said plaintiff, rights and powers, and said plaintiff exercised, as to them, such rights and powers, as were created by said instru-

ment 'Exhibit 1,' and were exercised by plaintiff and its officers and directors in relation to the persons, natural or artificial, who were theretofore members of such combination and trust.

"In the further carrying out of said scheme to stifle competition; to restrain commerce between the States and Territories of the United States and with foreign countries; to unduly and unreasonably enhance prices, it was further agreed between the members of said combination and trust, that the so-called directors of plaintiff, being really a committee appointed, as aforesaid, by said the members of said trust or combination, should arbitrarily classify the wholesale dealers of wall paper in the United States and Territories thereof, into two (2) classes, namely, jobbers and 'Road' or 'Quantity Buyers;' that they should further arbitrarily classify the jobbers into 'first class,' and 'second class' and 'third class' jobbers; that they should further arbitrarily classify the other wholesalers into 'Road' or 'Quantity Buyers,' and 'Special Buyers;' that, being thus classified, they should all be compelled to sign written agreements, nominally with said company, really with said members of said combination or trust, obligating them to buy their entire stock of merchandise from said company.

"A copy of said agreement so to be signed by said jobbers, is attached hereto, marked 'Exhibit 2' [which is in margin [1]] and

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[1] EXHIBIT 2.

An agreement made this — day of ———, in the year one thousand eight hundred and ninety-eight, between the Continental Wall Paper Company, a corporation organized under the laws of the State of New York (hereinafter called the company), party of the first part, and ——— ———, of ——— (hereinafter called the jobber), party of the second part.

In consideration of the sum of one dollar, paid by the jobber unto the company for granting of this agreement, the receipt whereof is hereby acknowledged, and other valuable considerations, it is agreed between the parties hereto as follows:

First. That the company will sell, subject to such credit limitation as it may impose, and the jobber will purchase the entire requirements

made part hereof, the same being printed forms with blanks for names, dates and amounts of purchases.

"To conceal the fact that it was an agreement to purchase from no one but said company, and the members of said combination and trust, the amount of purchases made by the buyer, in the previous year, from all the members of said combination or trust, being the entire amount of purchases made by such

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of the jobber in his business of selling wall paper for the business year ending July 1st, 1899, to the amount of a gross value, without discounts, of ———, the jobber reserving to himself the right to purchase such merchandise as he may need in excess of ——— from others.

The company is to deliver the goods without additional charge f. o. b. at New York or Philadelphia, or to equalize freights from the places at which it makes deliveries to either of said cities.

Second. The jobber shall be allowed discounts at the rates shown in the accompanying schedule, marked "A," which is hereby embodied in this agreement as a part thereof.

The terms of payment to be as follows: Four months from the date of invoice, with discount at the rate of 1 per cent per month for anticipated payment; provided settlement be made within 30 days from date of shipment, either by cash or note. Invoices for all goods shipped between October 15th and March 1st to take the latter date.

Third. Attached hereto, marked "B," is a schedule of the road prices at which the company sells its goods for the term embraced in this contract to dealers other than jobbers, and also a statement of discounts allowed to such customers other than jobbers for quantity purchases, together with the terms of credit and freight allowance to which such customers are entitled.

It is an essential condition of this agreement that the jobber will not directly or indirectly sell or offer for sale any of the merchandise purchased from the company hereunder at lower prices or upon better or more favorable terms than those shown in schedule "B," the intent hereof being to assure the company against the use by the jobbers of this agreement to undersell the company.

The prompt performance by the jobber of the provisions of this agreement as to payment and otherwise is a condition precedent to exacting the continuous performance of said agreement by the company.

In witness whereof the company has caused this instrument to be executed, and the jobber has hereunto set his hand, the day and year first above written.

buyer, during the preceding year, was ascertained, and an amount at least double thereof, being an amount supposed to be, and which was in fact, more than, by any possibility, could be needed by such buyer, was inserted in said blank as the amount to be purchased by such buyer from the company.

"By said agreement, the prices to be paid by the jobber were fixed according to the class in which he was arbitrarily placed, at prices enumerated in schedule B, attached to said 'Exhibit 1,' and the prices at which, alone, said jobber could sell were fixed as shown by schedule C, attached to said 'Exhibit 1.'

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"Schedule A attached to said 'Exhibit 2' is the same, so far as relates to jobbers of the class with whom the agreement is made, as the corresponding provisions of schedule B, attached to said 'Exhibit 1' and schedule B, attached to 'Exhibit 2' is the same as schedule C, attached to 'Exhibit 1.' The members of said combination and trust, and said plaintiff, further to carry out said agreement, compelled all other wholesale and quantity buyers to sign agreements in the form attached to this answer, marked 'Exhibit 3' [which is in the margin[1]], and

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[1] EXHIBIT 3.

In consideration of your having sold us wall paper, etc., at list prices and at quantity discounts as per following schedule:

	Per cent	Per cent
Up to 5½c. inclusive	600 rolls, 5	1200 rolls, 10
6c. to 9c. inclusive	300 rolls, 7½	600 rolls, 12½
10c. to 15c. inclusive	200 rolls, 10	400 rolls, 15
16c. and up	100 rolls, 10	200 rolls, 15

Discount on borders and ceiling papers follow the discounts on the hangings they match.

Plain ingrains.

Varnish tiles, 200 rolls or more, 10 per cent.

Ingrain borders, 26 rolls of a kind, 10 per cent

Ingrain borders, 50 rolls or over, 15 per cent.

We hereby agree not to sell any of such goods to others on terms bet-

filed herewith; the same being a printed form with blanks for signatures and having attached thereto the prices shown in schedule C, attached to 'Exhibit 1,' which are the list prices referred to in said agreement.

"All said agreements, 'Exhibits 1, 2 and 3' were drawn for the purpose, and with the intent of disguising the real nature of the transaction and the real purpose, as herein set forth.

"In further carrying out said combination and with said purpose and intent, agreements were made by plaintiff and the members of said combination and trust, and persons, natural and artificial, in the Dominion of Canada, by which each agreed not to compete with the other, nor cut prices, the Americans in Canada, the Canadians in the United States.

"On, before and after said first day of July, A. D. 1898, this defendant had a large and profitable business of long standing, possessing a valuable good will, and in which it had a large capital invested, being what is generally called the business of a jobber or wholesaler of wall paper in the State of Ohio and throughout the States and Territories of the United States.

"The defendant and all other persons engaged in the wholesale wall paper business, at the beginning of each season, which commenced in September and closed the first of July, following, according to the custom of the trade, bought from the various persons engaged in the manufacture and sale of wall paper in the *United States, being the persons, members of said combination and monopoly, their* stock of wall paper to be sold by them during the ensuing year, such stock to be manufactured for them from samples submitted at the beginning of said season, in wholesale lots, and those for defendant to be shipped to Cincinnati, Ohio, and there resold by defendant, from time to time, to retail dealers throughout the States of Ohio, Kentucky,

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ter or more favorable than those specified in the above schedule nor lower than said list prices, and our faithful performance of this agreement is a condition precedent to the filling of our order.

The intent hereof is to protect you fully against being undersold by us among customers to whom you do [not] allow quantity discounts.

Indiana, Illinois, and other States and Territories of the United States.

"At said time said members of said combination and trust having, by the agreements and acts aforesaid, obtained the control of the wall paper trade throughout the United States, at once greatly advanced the price of said wall paper, and threatened defendant that, unless it signed said agreement, 'Exhibit 2,' no wall paper would be sold to it; that said combination would make it impossible for it to buy wall paper, or to continue its business, and would drive it out of its said business, and compel it to sacrifice the good will owned by it as aforesaid, and the capital invested by it in said business.

"Said combination or trust then, and from that time thereafter, until the first day of July, A. D. 1900, had the power, by means of said combination and said agreements, and the will, to carry out its said threats, and deprive these defendants or any person, firm or corporation engaged in the business of selling wall paper in the United States, of the power to obtain wall paper for its or their trade, and the will and the power to drive out of business any person, firm or corporation engaged in the business of selling wall paper; deprive them of their good will, and compel them to sacrifice the capital invested in the business.

"In like manner, by the same means, all other jobbers and wholesalers of wall paper in the United States, and all persons engaged in commerce in the wall paper trade between the several States of the Union and foreign countries, were compelled to, and did sign the agreements attached to this answer, as 'Exhibits 2 and 3.'

"The immediate, intended and direct effect of the said combination and agreements was the stifling of competition between said manufacturers and vendors of wall paper, and between the jobbers and wholesalers thereof, and to unduly enhance the price of wall paper, making it one-half more than the price which it would be had the same been left to free and unrestrained competition; to compel said jobbers and whole-

salers to pay such unduly enhanced and unreasonable price to plaintiff, and to members of said combination, and to exact from others an unduly enhanced price.

"After the making of said agreements, as before, the members of such combination solicited and received orders from this defendant, and all other wholesalers; filled their orders; charged the prices fixed in said schedules attached to said 'Exhibit 1' and directed that payment for such merchandise should be made by the jobbers to said plaintiff combination for said several members of said combination and trust, to be divided in the manner aforesaid. Said combination contrived, intended and did prevent free and unrestrained competition between the producers, and between the purchasers of wall paper, and between the jobbers and wholesalers of wall paper throughout the United States.

"Defendant avers that said plaintiff, and the members of said combination as aforesaid, being more than two persons, firms, corporations, partnerships, and associations, combined capital and skill for each and all of the following purposes, to wit: To create restrictions in trade and commerce; to carry out restrictions in trade and commerce; to limit the product of wall paper; to reduce the production of wall paper; to increase the price of wall paper; to prevent competition in the manufacturing and making of wall paper; to prevent competition in the sale of wall paper; to prevent competition in the purchase of wall paper; to fix a standard or figure whereby its price to the public or consumer should be controlled and established as to an article or commodity of merchandise, to wit: wall paper intended for sale, use and consumption in the States of Ohio, Indiana, Kentucky and Illinois; to make and enter into contracts, obligations and agreements by which they bound themselves not to sell or dispose of wall paper below a common standard figure or fixed value; to carry out contracts, obligations and agreements by which they bound themselves not to sell or dispose of wall paper below a common standard figure or fixed value; to make and enter into contracts, obligations

and agreements by which they agreed to keep the price of wall paper at a fixed or graduated figure; to carry out contracts, obligations and agreements by which they agreed to keep the price of wall paper at a fixed or graduated figure; to make and enter into contracts, obligations and agreements by which they established and settled the price of wall paper between themselves and between themselves and others, so as to both directly and indirectly preclude a free and unrestricted competition among themselves, and among themselves and purchasers, and among purchasers in the sale of wall paper; to carry out contracts, obligations and agreements by which they established and settled the price of wall paper between themselves and themselves and others, so as to both directly and indirectly preclude a free and unrestricted competition both between themselves, and between themselves and purchasers, and between purchasers in the sale of wall paper; to make and enter into contracts, obligations and agreements by which they agreed to pool, combine, and both directly and indirectly unite the interests they had connected with the sale of wall paper so that its price might be affected; to carry out contracts, obligations and agreements by which they agreed to pool, combine and both directly and indirectly unite the interests that they had connected with the sale of wall paper so that its price might be affected.

"Said contracts and agreements were each and all combinations and conspiracies in restraint of trade and commerce among the several States, and with foreign nations, and had the intent and effect of restraining trade and commerce between the several States and with foreign nations, and were an attempt, by combinations and conspiracy, between the members of said combination and trust to monopolize the trade and commerce in wall paper among the several States and with foreign nations, and, by said contracts, and the acts done by members thereof, and by said plaintiff under and in pursuance thereof said plaintiff and the said members of said combination or trust did monopolize and attempt to monopolize the trade and

commerce in wall paper among the several States and with foreign nations.

"In further carrying out of said scheme and combination the members thereof delivered to this defendant, in the year from September, A. D. 1898, to September, A. D. 1899, wall paper for which this defendant paid to said plaintiff, for and per direction of the members of said combination, the sum of one hundred and forty-four thousand eight hundred and fifty-four dollars and fourteen cents ($144,854.14).

"These defendants aver that the prices charged in said Exhibit attached to said amended petition [which are itemized accounts showing each article and the price therefor alleged to have been sold and delivered to the defendant] *are the prices fixed and determined in pursuance of and by the combination or trust agreement, as above set forth, and are unreasonable, unjust and excessive* and *at least one-half more than they would otherwise have been. In transacting all business aforesaid, at all said times, said business was transacted under and in pursuance of said combination or trust agreement, and for the purposes, and each of them, above specified, and not otherwise.*

"The allegations in said plaintiff's petition set forth as a suit on account are an attempt to enforce, carry out and recover upon and by virtue of said unlawful combination, aforesaid, *the prices fixed by such combination, and the prices therein sought to be recovered for said merchandise are unreasonable, excessive and above the fair market price of such merchandise by more than the amount so sought to be recovered.*

"Each and all of the provisions of said contract and agreement between said members of said combination and each other; between said so-called vendors and said plaintiff; between said members of said combination and said plaintiff and the so-called jobbers; between the members of said combination and trust and said plaintiff and the so-called 'Road' or 'Quantity Buyers,' are each and all contrary to the provisions of the statutes of the State of New York, where said plaintiff was organized; contrary to the provisions of the laws of the

State of Ohio, where the merchandise was delivered; contrary to the laws of the several States where each of the members of said combination did business; contrary to the laws of the United States; and made criminal by the laws of each of said several States and by the laws of the United States; and each and all of said agreements aforesaid are contrary to public policy, and in violation of the rights of the defendant, and injurious to the interests of the consumer and of the public."

MR. JUSTICE HARLAN, after making the above statement, delivered the opinion of the court.

The Anti-Trust Act of 1890 declares illegal every contract, combination in the form of a trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, and also declares it to be a misdemeanor, punishable by fine or imprisonment, or both, for any one to make any such contract or to engage in any such combination or conspiracy. § 1. It is also made a misdemeanor, punishable by fine or imprisonment, or both, for any one to monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States or with foreign nations. § 2. Similar provisions were made in reference to contracts, combinations in the form of trust or otherwise, or conspiracies, in restraint of trade or commerce in any Territory of the United States or in the District of Columbia, or between any such Territory or another, or between any such Territory or Territories and any State or States or the District of Columbia or with foreign nations, or between the District of Columbia and any State or States or foreign nations. § 3. The act further provided that any person injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful, may sue therefor in the Circuit Court of the United States in the district where the defendant resides or is found, without regard to the amount

in controversy, and recover threefold the damages sustained by him. § 3. 26 Stat. 209.

The defendant contends that under the facts admitted by the demurrer it must be taken that the Continental Wall Paper Company is the representative in this suit of a combination or trust formed for the purpose of restraining and monopolizing trade and commerce among the several States in the manufacturing, buying, selling and dealing in wall paper; that this combination has the direct effect to accomplish that purpose; that the defendant, engaged in buying and selling wall paper in Ohio and other States, was compelled to become a party to the illegal combination or go out of business; that the account in suit was made up, as to prices and terms of sale, not upon the basis of an independent, collateral contract for goods sold and delivered, but with direct reference to, in conformity with and for the object of enforcing the agreements that constituted, or out of which came, the illegal combination whose business is carried on under the name of the Continental Wall Paper Company; that a judgment against the defendant upon the account in suit will, in effect, legally and practically aid the combination to reap the fruits of agreements that were illegal under the acts of Congress, and the making of which was declared by that act a crime; consequently, that the petition upon the facts admitted was properly dismissed.

That the combination represented by the plaintiff company is within the prohibitions of the above act of Congress is clear from the facts admitted by the demurrer. We assume, therefore, without discussion—for discussion is unnecessary—that there is a combination, of which the Continental Wall Paper Company is the representative, and that, in violation of that act, such combination was formed with the intent, and will have the effect, directly, to restrain as well as monopolize trade and commerce among the several States and with foreign nations as involved in the manufacture, sale and transportation of wall paper among the several States and with foreign nations. This part of the case is forcibly presented by the Cir-

cuit Court of Appeals which, in its opinion delivered by Judge Lurton, well said: "The conspiring mills were situated in many States. The consumers [of wall paper] embraced the whole citizenship of the United States. The jobbers and wholesalers, who were to be coerced into contracts to buy their entire demands from the Continental Wall Paper Company or be driven out of business, were in every State. Before the combination each of the combining companies was engaged in both state and interstate commerce. The freedom of each, with respect to prices and terms, was restrained by the agreement and interstate commerce directly affected thereby, as well as by the enhancement of prices which resulted. A more complete monopoly in an article of universal use has probably never been brought about. It may be that the wit of man may yet devise a more complete scheme to accomplish the stifling of competition. But none of the shifts resorted to for suppressing freedom of commerce and securing undue prices, shown by the reported cases, is half so complete in its details. None of the schemes with which this may be compared is more certain in results, more widespread in its operation, and more evil in its purposes. It must fall within the definition of a 'restraint of trade,' whether we confine ourselves to the common law interpretation of that term or apply that given to the term as used in the Federal act." 148 Fed. Rep. 939, 947.

But it is contended that however illegal the combination represented by the plaintiff may be, and whatever may be the effect of a judgment against the defendant, the plaintiff company is entitled to a judgment under the principles announced in *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, 545. Let us see what that case was and whether it may not be distinguished from the one now before us.

The Union Sewer Pipe Company, a corporation of Ohio, doing business in Illinois, brought suit against Connolly, a citizen of Illinois, upon promissory notes given in Illinois on account of the purchase by the defendant from that company, under contracts made in that State, of sewer pipe known as

Akron pipe. It also brought suit against one Dee, a citizen of Illinois, upon an open account for the value of similar sewer pipe sold to him under a written contract, also made in that State. In each case the defendant disputed his liability for the value of the goods obtained from the Sewer Pipe Company upon the ground that at the time of their respective purchases that company was in a combination with certain firms, corporations and companies engaged in the manufacture of Akron pipe, which combination, it was alleged, was in illegal restraint of trade, and forbidden by the principles of the common law, as recognized and enforced both in Ohio and Illinois. The defense was also made that the Sewer Pipe Company was a combination doing business throughout the United States and between Ohio and Illinois, in the form of a trust, in restraint of trade and commerce among the several States, contrary not only to the Anti-Trust Act of Congress of July 2d, 1890, c. 647, but contrary to the Illinois Anti-Trust statute of January 1st, 1893, forbidding, under penalties, the combination of capital, skill or acts for certain specified purposes. 26 Stat. 209; Laws Ill. 1893, p. 182; Hurd's Rev. Stat. Ill., 1899, p. 618, title Criminal Code.

The defense based upon the principles of the common law was overruled in the *Connolly Case*, the court saying: "Assuming, as defendants contend, that the alleged combination was illegal if tested by the principles of the common law, still it would not follow that they could, at common law, refuse to pay for pipe bought by them under special contracts with the plaintiff. The illegality of such combination did not prevent the plaintiff corporation from selling pipe that it obtained from its constituent companies, or either of them. It could pass a title by a sale to any one desiring to buy, and the buyer could not justify a refusal to pay for what he bought and received by proving that the seller had previously, in the prosecution of its business, entered into an illegal combination with others in reference, generally, to the sale of Akron pipe." Again, after referring to several cases establishing the general

principle that a court will not lend assistance to carry out the terms of an illegal contract, and that one purchasing and receiving goods under a contract, expressed or implied, to pay for them, cannot refuse to pay simply because of the illegal character of his vendor, the court proceeded: "In the present [Connolly] case other considerations must control. This is not an action to enforce or which involves the enforcement of the alleged arrangement or combination between the plaintiff corporation and other corporations, firms and companies in relation to the sale of Akron pipe. As already suggested, the plaintiff, even if part of a combination illegal at common law, was not for that reason forbidden to sell property it acquired or held for sale. The purchases by the defendants had no necessary or direct connection with the alleged illegal combination; for the contracts between the defendants and the plaintiff could have been proven without any reference to the arrangement whereby the latter became an illegal combination. If, according to the principles of the common law, the Union Sewer Pipe Company could not have sold or passed title to any pipe it received and held for sale, because of an illegal arrangement previously made with other corporations, firms or companies, a different question would be presented. But we are aware of no decision to the effect that a sale similar to that made by the present plaintiff to the defendants respectively would, in itself, be illegal or void under the principles of the common law. The contracts between the plaintiff and the respective defendants were, in every sense, collateral to the alleged agreement between the plaintiff and the other corporations, firms or associations whereby an illegal combination was formed for the sale of sewer pipe."

Turning to the defense based on the Anti-Trust Act of Congress, the court in the *Connolly Case* said: "Much of what has just been said in reference to the first special defense based on the common law is applicable to this part of the case. If the contract between the plaintiff corporation and the other named corporations, persons, and companies, or the combination

thereby formed, was illegal under the act of Congress, then all those, whether persons, corporations or associations, directly connected therewith, became subject to the penalties prescribed by Congress. But the act does not declare illegal or void any sale made by such combination, or by its agents, of property it acquired or which came into its possession for the purpose of being sold—such property not being at the time in the course of transportation from one State to another or to a foreign country. The buyer could not refuse to comply with his contract of purchase upon the ground that the seller was an illegal combination which might be restrained or suppressed in the mode prescribed by the act of Congress; for Congress did not declare that a combination illegally formed under the act of 1890 should not, in the conduct of its business, become the owner of property which it might sell to whomsoever wished to buy it. So that there is no necessary legal connection here between the sale of pipe to the defendants by the plaintiff corporation and the alleged arrangement made by it with other corporations, companies and firms. The contracts under which the pipe in question was sold were, as already said, collateral to the arrangement for the combination referred to, and this is not an action to enforce the terms of such arrangement. That combination may have been illegal, and yet the sale to the defendants was valid." Further: "Nor can the defendants refuse to pay for what they bought upon the ground that the seventh section of the Sherman act gives the right to any person 'injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful' by the act, to sue and recover treble the damage sustained by him. We shall not now attempt to declare the full scope and meaning of that section of the act of Congress. It is sufficient to say that the action which it authorizes must be a direct one, and the damages claimed cannot be set off in these actions based upon special contracts for the sale of pipe that have no direct connection with the alleged arrangement or combination between the plaintiff and

other corporations, firms or companies. Such damages cannot be said, as matter of law, to have directly grown out of that arrangement or combination, and are, besides, unliquidated. Besides, it is well settled in Illinois that 'unliquidated damages arising out of covenants, contracts or torts disconnected with plaintiff's claim cannot be set off under the statute.' "

We need not here refer to that part of the *Connolly Case* relating to the defense based on the Anti-Trust Act of Illinois; for, the court adjudged that act to be void because of a certain provision in it which, contrary to the Constitution of the United States, denied the equal protection of the laws to all persons within the jurisdiction of the State, except a named favored class.

The present case is plainly distinguishable from the *Connolly Case*. In that case the defendant, who sought to avoid payment for the goods purchased by him under contract, had no connection with the general business or operations of the alleged illegal corporation that sold the goods. He had nothing whatever to do with the formation of that corporation, and could not participate in the profits of its business. *His* contract was to take certain goods at an agreed price, nothing more, and was not in itself illegal, *nor part of nor in execution of any general plan or scheme that the law condemned.* The contract of purchase was wholly collateral to and independent of the agreement under which the combination had been previously formed by others in Ohio. It was the case simply of a corporation that dealt with an entire stranger to its management and operations and sold goods that it owned to one who wished to buy them. In short, the defense in the *Connolly Case* was that the plaintiff corporation, although owning the pipe in question and having authority to sell and pass title to the property, was precluded by reason *alone* of its illegal character from having a judgment against the purchaser. We held that that defense could not be sustained either upon the principles of the common law or under the Anti-Trust Act of Congress.

The case now before us is an entirely different one. The Continental Wall Paper Company seeks, in legal effect, the aid of the court to enforce a contract for the sale and purchase of goods which, *it is admitted by the demurrer was in fact and was intended by the parties to be based upon agreements that were and are essential parts of an illegal scheme.* We state the matter in this way, because the plaintiff by its demurrer admits for the purposes of this case the truth of all the facts alleged in the third defense. It is admitted by the demurrer to that defense that the account sued on has been made up *in execution of the agreements* that constituted or out of which came the illegal combination formed for the purpose and with effect of both restraining and monopolizing trade and commerce among the several States.

The present suit is not based upon an implied contract of the defendant company to pay a reasonable price for goods that it purchased, but upon agreements, to which both the plaintiff and the defendant were parties, and *pursuant to which* the accounts sued on were made out, and which had for their object, and which it is admitted had directly the effect, to accomplish the illegal ends for which the Continental Wall Paper Company was organized. If judgment be given for the plaintiff the result, beyond all question, will be to give the aid of the court in making effective the illegal agreements that constituted the forbidden combination. These considerations make it evident that the present case is different from the *Connolly Case.* In that case the court regarded the record as presenting the question whether a voluntary purchaser of goods at stipulated prices, under a collateral, independent contract, can escape an obligation to pay for them upon the ground *merely* that the seller, which owned the goods was an illegal combination or trust. We held that he could not, and nothing more touching that question was decided or intended to be decided in the *Connolly Case.* The question here is whether the plaintiff company can have judgment upon an account which, it is admitted by demurrer, was made up, within the knowledge of

both seller and buyer, with direct reference to and in execution of certain agreements under which an illegal combination, represented by the seller, was organized. Stated shortly, the present case is this: The plaintiff comes into court admitting that it is an illegal combination whose operations restrain and monopolize commerce and trade among the States and asks a judgment that will give effect, as far as it goes, to agreements that constituted that combination, and by means of which the combination proposes to accomplish forbidden ends. We hold that such a judgment cannot be granted without departing from the statutory rule, long established in the jurisprudence of both this country and England, that a court will not lend its aid, in anyway, to a party seeking to realize the fruits of an agreement that appears to be tainted with illegality, although the result of applying that rule may sometimes be to shield one who has got something for which as between man and man he ought, perhaps, to pay, but for which he is unwilling to pay.

In such cases the aid of the court is denied, not for the benefit of the defendant, but because public policy demands that it should be denied without regard to the interests of individual parties. It is of no consequence that the present defendant company had knowledge of the alleged illegal combination and its plans or was directly or indirectly a party thereto. Its interest must be put out of view altogether when it is sought to have the assistance of the court in accomplishing ends forbidden by the law.

In *Hanauer* v. *Doane*, 12 Wall. 342, 349, this court said: "The whole doctrine of avoiding contracts for illegality and immorality is founded on public policy. It is certainly contrary to public policy to give the aid of the courts to a vendor who knew that his goods were purchased, or to a lender who knew that his money was borrowed, for the purpose of being employed in the commission of a criminal act, injurious to society or to any of its members."

In *McMullen* v. *Hoffman*, 174 U. S. 639, 654, 669, where

the authorities are reviewed and the whole subject carefully examined, the court said: "The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract"—citing many English and American cases —"The court refuses to enforce such a contract, and it permits defendant to set up its illegality, not out of any regard for the defendant who sets it up, but only on account of the public interest. It has been often stated in similar cases that the defense is a very dishonest one, and it lies ill in the mouth of the defendant to allege it, and it is only allowed for public considerations and in order the better to secure the public against dishonest transactions. To refuse to grant either party to an illegal contract judicial aid for the enforcement of his alleged rights under it tends strongly towards reducing the number of such transactions to a minimum. The more plainly parties understand that when they enter into contracts of this nature they place themselves outside the protection of the law, so far as that protection consists in aiding them to enforce such contracts, the less inclined will they be to enter into them. In that way the public secures the benefit of a rigid adherence to the law." In that case the principle announced in *Coppell* v. *Hall*, 7 Wall. 542, 558, was reaffirmed, namely: "Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent of the defendant can neutralize its effect. A stipulation in the most solemn form to waive the objection would be tainted with the vice of the original contract, and void for the same reason. Wherever the contamination reaches it destroys. The principle to be extracted from all the cases is, that the law will not lend its support to a claim founded upon its violation."

In *Embrey* v. *Jemison*, 131 U. S. 336, 348, the defendant, who was sued upon promissory notes given in execution of a previous verbal contract that was illegal, this court said that he could not "be permitted to withdraw attention from this

feature of the transaction by the device of obtaining notes for the amount claimed under the illegal agreement; for they are not founded on any new or independent consideration, but are only written promises to pay that which the obligor had verbally agreed to pay. They do not, in any just sense, constitute a distinct or collateral contract based upon a valid consideration. Nor do they represent anything of value in the hands of the defendant which, in good conscience, belongs to the plaintiff or to his firm. Although the burden of proof is on the obligor to show the real consideration, the execution of the notes could not obliterate the substantive fact that they grew immediately out of and are directly connected with a wagering contract. They must, therefore, be regarded as tainted with the illegality of that contract, the benefits of which the plaintiff seeks to obtain by this suit. That the defendant executed the notes with full knowledge of all the facts is of no moment. The defense he makes is not allowed for his sake, but to maintain the policy of the law. *Coppell* v. *Wall*, 7 Wall. 542, 558."

In *Montague & Co.* v. *Lowry*, 193 U. S. 38, 45, 46, which involved, in part, the question whether a particular contract made in California for the purchase of tiles related to interstate commerce, and was illegal, the court said: "The provision as to this sale is but a part of the agreement, and it is so united with the rest as to be incapable of separation without at the same time altering the general purpose of the agreement. The whole agreement is to be construed as one piece, in which the manufacturers are parties as well as the San Francisco dealers, and the refusal to sell on the part of the manufacturers is connected with and a part of the scheme which includes the enhancement of the price of the unset tiles by the San Francisco dealers. The whole thing is so bound together that when looked at as a whole the sale of unset tiles ceases to be a mere transaction in the State of California, and becomes a part of a purpose which, when carried out, amounts to and is a contract or combination in restraint of interstate trade or commerce."

So, in *Swift & Co.* v. *United States*, 196 U. S. 375, 396: "The scheme as a whole seems to us to be within reach of the law. The constituent elements, as we have stated them, are enough to give to the scheme a body, and for all that we can say, to accomplish it. Moreover, whatever we may think of them separately, when we take them up as distinct charges, they are alleged sufficiently as elements of the scheme. It is suggested that the several acts charged are lawful and that intent can make no difference. But they are bound together as the parts of a single plan. The plan may make the parts unlawful. *Aikens* v. *Wisconsin*, 195 U. S. 194, 206."

In *Bement* v. *National Harrow Company*, 186 U. S. 70, 87, 88, the court, after referring to that section of the act of Congress relating to suits by the Attorney General and by persons injured in their business or property, said: "Assuming that the plaintiff is right so far as regards any suit brought under that act, we are nevertheless of opinion that any one sued upon a contract may set up as a defense that it is a violation of the act of Congress, and if found to be so, that fact will constitute a good defense to the action. The first section of the act provides that 'every contract, combination in the form of trust, or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal.' Every person making such a contract is deemed guilty of a misdemeanor, and on conviction is to be punished by fine or by imprisonment, or both. As the statute makes the contract in itself illegal, no recovery can be had upon it when the defense of illegality is shown to the court. The act provides for the prevention of violations thereof, and makes it the duty of the several district attorneys, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations, and it gives to any person injured in his business or property the right to sue, but that does not prevent a private individual when sued upon a contract which is void as in violation of the act from setting it up as a defense, and we think when proved it is a valid de-

fense to any claim made under a contract thus denounced as illegal."

Again, in the recent case of *Loewe* v. *Lawlor*, 208 U. S. 274, 301, which involved the inquiry whether certain acts could be regarded as in restraint of interstate commerce, the court said: "So that, although some of the means whereby the interstate traffic was to be destroyed were acts within a State and some of them were in themselves as a part of their obvious purpose and effect beyond the scope of Federal authority, still, as we have seen the acts must be considered as a whole, and the plan is open to condemnation, notwithstanding a negligible amount of intrastate business might be affected in carrying it out. If the purpose of the combination was, as alleged, to prevent any interstate transportation at all, the fact that the means operated at the one end before physical transportation commenced and at the other end after the physical transportation ended, was immaterial." See also *Gibbs* v. *Baltimore Gas Co.*, 130 U. S. 396, 412.

The adjudged cases all hold that upon the question whether the particular contract sought to be enforced arises out of an illegal transaction, the court will not be restricted to a partial statement of the facts but will consider all the circumstances connected with the transaction so as to ascertain its real nature. In *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 247, the court said that "all the facts and circumstances are, however, to be considered in order to determine the fundamental question whether the necessary effect of the combination is to restrain interstate commerce."

Upon the whole case, and without further citation of authorities, we adjudge, upon the admitted facts, that the combination, represented by the plaintiff in this case, was illegal under the Anti-Trust Act of 1890; that it is to be taken as one intended, and which will have the effect directly, to restrain and monopolize trade and commerce among the several States and with foreign States; and that the plaintiff cannot have a judgment for the amount of the account sued on, because, for

the reasons we have stated, such a judgment would, in effect, aid the execution of the agreements which constituted that illegal combination. We consequently hold that the Circuit Court of Appeals properly sustained the third defense, and rightly dismissed the suit. Its judgment must be affirmed.

It is so ordered.

MR. JUSTICE HOLMES, with whom concurred MR. JUSTICE BREWER, MR. JUSTICE WHITE and MR. JUSTICE PECKHAM, dissenting.

This action is for goods admitted to have been sold and delivered by the plaintiff to the defendant, and the question arises, as has been explained, on demurrer to the third defense. The elements of that defense may be stated in a few words. Nearly all the manufacturers of wall paper in the United States formed a combination which, under the present policy of the law, was an illegal attempt to restrain and monopolize trade in and among the several States. As a part of the scheme the plaintiff corporation was created, which by the agreement became the purchaser of the products of the constituent companies, and was to sell the same, although the constituent companies continued to manufacture and to carry on the business of soliciting orders. The only material facts about this agreement are that under it the plaintiff got title to the goods, that it fixed prices at which goods were to be sold, and that it contemplated compelling the jobbers and others who bought to purchase at those prices, if they were to get any paper at all. The conspirators threatened and had the power to drive any jobber out of business who did not come in.

In pursuance of the combination and its purpose the defendant, a jobbing house, and all other jobbers, were compelled to sign a contract which, in effect, bound them to buy all the wall paper needed in their business from the plaintiff at the above-mentioned prices, and which made it an "essential condition of this agreement" that they should not sell at lower prices

or upon better terms than those at which the plaintiff sold. After these two contracts were made the defendant ordered the goods in question at the prices named. It is alleged that those prices were unreasonable, and it is alleged, repeatedly and with much detail, that all the arrangements were made and all the business was done in furtherance of the plan set forth, contrary to the law of the United States and of the States concerned, and in violation of the defendant's rights, this suit being the final step in the attempt to carry out the plan.

It seems to me that the foregoing facts show no defense. I will consider them in their successive degrees of connection with the affair, and in the first place will take up the terms of the actual contracts in suit. These were ordinary parol sales made by the owner of goods. The suit was not upon the general agreement between the plaintiff and defendant. That by itself sold nothing, and it may be questioned whether it purported absolutely to bind the defendant to buy a roll of paper. See *Dennis* v. *Slyfield*, 117 Fed. Rep. 474; *Sterling Coal Co.* v. *Silver Spring Bleaching & Dyeing Co.*, 162 Fed. Rep. 848, 850. The actual contracts by which the plaintiff bound itself to deliver, and the sales under which it did deliver the specific goods for which it seeks to recover the price, were made after the making of the general agreement, as it is apparent on the face of that agreement that they must have been, and as is alleged by the answer in so many words. Each was a separate transaction. There is nothing alleged concerning the terms of these parol sales that has any element of illegality about it.

Next as to the effect of the general agreement between the plaintiff and defendant. It is alleged that after it was made the members of the combination solicited, received and filled orders, and charged the prices fixed in the original combination agreement. It is not alleged that either agreement was referred to even by implication. The sales are left by the answer as so many distinct transactions. But if, in order to help the defendant to escape, we are to infer that the orders were given with implied reference to the general contract, what ef-

fect could such a reference have? Plainly only to fix the price, and for this purpose it was simply a schedule, figures on a piece of paper or in the memory of the parties, which were adopted by pointing to them in some way, as if they had been written on a blackboard. It did not matter whether the document pointed at was lawful or unlawful, as the whole business was done by the later contracts. See *Interstate Consolidated Street Ry. Co.* v. *Massachusetts*, 207 U. S. 79, 84, 85.

If the condition in the general agreement between the plaintiff and defendant made it bad, still it went only to that agreement and to the plaintiff's promise to sell at certain prices, not to any subsequent sales, or to the defendant's title to goods got under subsequent sales. If it had been incorporated in any way into the specific sales, it would be necessary to consider the case of *Cincinnati, Portsmouth, Big Sandy & Pomeroy Packet Co.* v. *Bay*, 200 U. S. 179, 185. But no such incorporation is alleged, or in any probability could have been alleged. So I think that I may assume that the parol sales were made no worse, on their face, by any reference to the content of the general agreement. And I may add that the unlawfulness of the general agreement would not make the sales bad from the outside, so to speak, if that was all that there was against them. A lawful purchase is not made unlawful merely by being the fulfillment of an unlawful contract.

It has been suggested that the plaintiff was not the real seller and only got its standing from the general agreement with the defendant, and that therefore it had to rely upon an illegal contract to make out its case. But the defense does not deny that the plaintiff became the owner of the goods or that the manufacturers sold in its name as the original combination provided. It is true that it says that the arrangements were made with a view of disguising the real transaction and purpose, and that really the business was to be done by the manufacturers, as I have stated. But it adds that payments were to be made to the plaintiff, and it nowhere suggests that the first contract set forth did not operate, or that the plaintiff

did not get the title it professed to transfer. Its illegality would not prevent the title passing. If the defendant meant to deny that it bought from the plaintiff goods which the plaintiff owned, it was very easy to deny it and to leave the plaintiff to set up the agreement if it did not join issue, as it naturally would. As the defense stands, I think it means, as I have no doubt is the fact, that the technical legal title to the goods was in the plaintiff, and that the defendant purported to contract with it, the manufacturers selling in its name.

I now pass to the more remote considerations that are supposed to have a greater effect. It is said that the specific sales, the general agreement and the original combination all are steps in one illegal plan, and that the plan gives character to the whole. But we must be more precise. The plaintiff alone was party to the plan. The defendant represents itself as a victim, and says that the plan was against its rights. On what ground then does the illegal purpose of the plaintiff warrant the defendant in professing to buy its goods and then refusing to pay for them?

The plaintiff's unlawful purpose did not make it unlawful to buy the plaintiff's goods. It is decided, if decision is necessary, that a purchaser cannot escape merely on the ground that the seller is an unlawful trust. *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540; *Chattanooga Foundry & Pipe Works* v. *Atlanta*, 203 U. S. 390, 397. I repeat that it is not alleged that the defendant in any way shared the plaintiff's intent, but to go further than I need, I will assume that it may be taken to have made the general contract with knowledge of that intent. But it cannot be contended that, therefore, it was party to a transaction illegal for that reason. Whenever a party knows that he is buying from an illegal trust, and still more when he buys at a price that he thinks unreasonable but is compelled to pay in order to get the goods he needs, he knows that he is doing an act in furtherance of the unlawful purpose of the trust, which always is to get the most it can for its wares. But that knowledge makes no difference, because the policy of not

furthering the purposes of the trust is less important than the policy of preventing people from getting other people's property for nothing when they purport to be buying it. And if knowledge of the purchaser that he is furthering the purpose of the trust makes no difference, it makes no difference whether he is glad or sorry for the result. A man does not make conduct otherwise lawful unlawful simply by yearning that it should be so. In this case however the defendant was an unwilling accessory, exactly as Dee was in the *Connolly Case.*

The effect of the defendant's knowledge of the plaintiff's scheme is not greater because it signed the illegal general contract. I think that I have shown that the illegality of that contract, taken by itself, did not make the specific sale illegal, and from the point of view that all that was done was a carrying out of the plaintiff's illegal scheme, it does not matter to the legality of the sales whether a particular previous step was legal or not. If knowledge that the plaintiff was attempting to monopolize, and that it sold at prices fixed in aid of the intent would not exonerate the defendant when it yielded to its necessities and bought, the same knowledge would have no greater effect if the same necessities led it to agree beforehand to do what it did.

Perhaps, in order to answer every aspect that this rambling defense presents, I ought to say in conclusion that the allegations that the price was unreasonable, and that the plaintiff threatened and had power to drive jobbers out of business that did not come into its arrangement, is not stated in such form as to make a case of duress. I think that that would have been the strongest ground on which the defense could have been put. Courts and legislation sometimes have recognized that the so-called freedom to contract or not may be made illusory by the economic situation of one of the parties. *Schlemmer* v. *Buffalo, Rochester & Pittsburg Ry. Co.*, 205 U. S. 1, 12. It would be extending the recognition further than it yet has been extended, so far as I am aware, to apply it to a case like this. But I express no opinion upon its possible ap-

plication because, as I have said, the allegations are not directed to that end, and do not sufficiently show that the specific purchases were induced by fear. Moreover, as such duress, like fraud, goes only to motives, *The Eliza Lines*, 199 U. S. 119, 131, if the frightened or defrauded party would rescind he must restore the consideration, or at least be ready to pay the reasonable price, of neither of which is there any hint.

I think that this decision must mean that *Connolly* v. *Union Sewer Pipe Co.*, 184 U. S. 540, ought to have been decided the other way. There, as here, there was, or was assumed to be, an illegal trust. In furtherance of the purposes of the trust a general agreement was made between the trust and the defendants, the purchasers, which required defendants to buy from the plaintiff alone at prices alleged to be unreasonable, they receiving a rebate upon that consideration, and which fixed a price at which the defendants would sell. There was just as much of a scheme and just the same scheme in that case as in this. In both the defendants coöperated as victims to the monopoly in precisely the same way. The facts spoke for themselves, and were the same. Nothing is added to the case by calling the arrangements set forth a scheme, but similar language was used in the former case, as appears from the record. The contract will be found in the same record. It was assigned as error and argued that the Circuit Court ruled that the said contract, again set forth, was not void. For these reasons I feel compelled to dissent from the judgment of the court. I am authorized to say that Mr. Justice BREWER, Mr. Justice WHITE and Mr. Justice PECKHAM concur in this dissent.

MR. JUSTICE BREWER, dissenting.

Concurring in the views expressed by Mr. Justice Holmes, it seems to me another matter is worthy of consideration.

The transactions between the plaintiff and defendant were, as held by the court, in violation of the Anti-Trust Act, 26

Stat. 209. That act defines the rights and liabilities of the parties. The first three sections prohibit contracts and combinations in restraint of trade and monopolies; declare a person violating the provisions of these sections guilty of a misdemeanor and prescribe the punishment. Section 4 gives power to the Circuit Courts of the United States to prevent and restrain violations of the act. Section 6 provides for a forfeiture of property owned under any contract or combination or pursuant to any conspiracy, and seized while in course of transportation. Section 7 declares that any person injured in his business or property by reason of anything forbidden or declared to be unlawful in the act may sue therefor in any Circuit Court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold damages by him sustained.

The present case comes within the proposition that "where a statute creates a new offense and denounces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can be only that which the statute prescribes." *Farmers & Mechanics' National Bank* v. *Dearing*, 91 U. S. 29, 35; *Barnet* v. *National Bank*, 98 U. S. 555. These two cases arose under the National Banking Act of June 3, 1864, c. 106, 13 Stat. 99, and illustrate the doctrine referred to. That act prescribed the rate of interest which might be taken by national banks, and added that knowing and receiving a greater rate of interest should forfeit the entire interest; or if the interest had been paid, that the person paying might recover in an action of debt twice the amount of interest thus paid. These cases held that relief for a violation of the statute was a forfeiture of the interest due and not paid, or in case the interest had been paid an action of debt to recover double the amount paid. See also *Oates* v. *National Bank*, 100 U. S. 239.

In *Stephens* v. *Monongahela Bank*, 111 U. S. 197, it was decided that the remedy prescribed by the statute was exclusive. In *Driesbach* v. *National Bank*, 104 U. S. 52, it was held that usurious interest paid a national bank on renewing a series of

notes could not in an action by the bank on the last of them be applied in satisfaction of the principal of the debt.

Now, the remedies given in the Anti-Trust Act are three in number: First, a criminal prosecution; second, a forfeiture of property; and, third, an action by any person injured to recover threefold the damages by him sustained. These being the remedies prescribed, are exclusive. The defendant sought neither of these remedies. It was not so anxious for the public welfare as to make complaint and secure criminal proceedings. There was no property to be forfeited. It did not seek to recover threefold the damage it had sustained, but only to avoid paying for the property it had purchased. The reason therefor is suggested in the opinion of the Circuit Court of Appeals, 148 Fed. Rep. 939, 950:

"The averment that they paid 50 per cent more for their gross purchases in consequence of the illegal combination has little merit in it, moral or otherwise. They doubtless sold again at the great minimum profit they agreed to exact from retailers, and the retailers later exacted the undue profit from the consuming public."

Something of the same idea of the exclusiveness of a statutory remedy finds expression in *Texas & Pacific Railway Company* v. *Abilene Cotton Oil Company*, 204 U. S. 426, in which it was held that a carrier could not maintain an action at common law for excessive and unreasonable freight charges exacted on interstate shipments, where the rates charged were those which had been duly fixed by the carrier according to the interstate commerce act, and had not been found to be unreasonable by the Interstate Commerce Commission, and this notwithstanding the provision in § 22 of the act to regulate interstate commerce: "Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies."